

**SPECIAL COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF
CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC
DIOCESE OF MAITLAND-NEWCASTLE**

At Newcastle Supreme Court
Court Room Number 1, Church Street, Newcastle NSW

On Monday, 24 June 2013 at 10.18am
(Day 11)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,
Ms Jessica Wardle

1 MS LONERGAN: This is the resumption of the hearing of the
2 Special Commission of Inquiry into term of reference 1.
3 For those present and for those in the body of the court,
4 I remind all that term of reference 1 is examining the
5 circumstances in which Detective Chief Inspector Fox was
6 asked to cease investigating relevant matters and whether
7 it was appropriate to do so. "Relevant matters" are
8 defined as any matter directly or indirectly relating to
9 alleged child sexual abuse involving Denis McAlinden or
10 James Fletcher, including the responses to such allegations
11 by officials of the Catholic Church and whether or not the
12 matter involved is alleged to have involved criminal
13 conduct.

14
15 Commissioner, today we are going to follow through the
16 witness list that was commenced back in May. We will hear
17 evidence from Detective Sergeant Little followed by
18 journalist Joanne McCarthy.

19
20 Before we move to that, I need to formally note
21 something on the record. I formally note that a submission
22 has been received from Mr Cohen, who is counsel for
23 Detective Chief Inspector Fox, and that submission requests
24 that certain matters that are not currently within the
25 terms of reference before the Commissioner be examined by
26 this Commission.

27
28 That application, Commissioner, has been forwarded to
29 be considered by the relevant person and through the
30 relevant channels. The submission arises out of issues
31 raised in a Lateline program last Thursday evening
32 regarding the operation of a group known as the
33 Professional Standards Resource Group. I understand that
34 it has been reported by the NSW Police that that issue is
35 to be considered within the hearing of this Special
36 Commission of Inquiry and or by this Special Commission of
37 Inquiry.

38
39 For the record, I note that some limited examination
40 of the operations of the New South Wales Professional
41 Standards Office of the Catholic Church will occur, but
42 only to the extent that they're relevant to this
43 Commission's terms of reference, and that will only be
44 relevant to term of reference 2, the hearing of which
45 commences next Monday.

46
47 It is the understanding of the staff who assist you

1 that the Professional Standards Resource Group, which was
2 the subject of that particular Lateline report, was and is
3 an advisory body and not involved in the exchange of
4 information between the Catholic Church and the police.
5 There's presently no evidence that any Professional
6 Standards Resource Group meeting or body dealt with any
7 matters involving Fletcher or McAlinden.

8
9 Evidence will be led in terms of reference 2 that
10 explains the role of the Professional Standards Office to
11 the extent it was involved in "relevant matters" as defined
12 and its role in reporting information on behalf of the
13 Catholic Church to the NSW Police.

14
15 THE COMMISSIONER: Thank you.

16
17 MS LONERGAN: I call Detective Sergeant Jeffrey Little.

18
19 <JEFFREY LESTER LITTLE sworn: [10.22am]

20
21 <EXAMINATION BY MS LONERGAN:

22
23 THE COMMISSIONER: Please take a seat.

24
25 MS LONERGAN: Q. Detective Sergeant Little, is your full
26 name Jeffrey Lester Little?

27 A. It is.

28
29 Q. That microphone doesn't amplify so would you keep your
30 voice up. You prepared a statement in consultation with
31 your lawyers dated 7 March 2013?

32 A. I did.

33
34 Q. I show you a copy of that document. Could you have a
35 look at that. Is that your signature on page 7 of the
36 statement?

37 A. Yes, ma'am.

38
39 Q. Are the contents true and correct?

40 A. Yes.

41
42 MS LONERGAN: I tender that statement, Commissioner.

43
44 THE COMMISSIONER: The statement of Detective Sergeant
45 Little, dated 7 March 2013, will be admitted and marked
46 exhibit 25.

47

1 **EXHIBIT #25 STATEMENT OF JEFFREY LESTER LITTLE DATED**
2 **7/03/2013**

3
4 MS LONERGAN: Q. You were the officer in charge of the
5 investigation known as Strike Force Lantle from 31 December
6 2010 to date?

7 A. Correct.

8
9 Q. Your statement addresses various matters in broad
10 terms relevant to your role on Strike Force Lantle?

11 A. Yes.

12
13 Q. There's particular emphasis in your statement on
14 issues relevant to this Special Commission of Inquiry's
15 term of reference 1, which is to the extent you had
16 interface with Detective Chief Inspector Fox?

17 A. Yes, ma'am.

18
19 Q. I'm just going to go through in broad terms your
20 background training and experience. Detective sergeant,
21 you were attested a police officer in October 1990?

22 A. Correct.

23
24 Q. You'll have to speak up a little for the people in the
25 back of the court so they can hear you?

26 A. That's correct.

27
28 Q. You did general duties for a year and then moved to
29 special operations for about 18 months after that?

30 A. Yes.

31
32 Q. Then you worked in general duties for a further period
33 and then moved to criminal investigations in Broken Hill
34 for a couple of years from 1997?

35 A. Yes.

36
37 Q. Then in 1999, you had a two year secondment to the
38 Australian Federal Police?

39 A. In Melbourne, yes.

40
41 Q. During your time down there, you were working on
42 various investigations?

43 A. Yes.

44
45 Q. Including complicated criminal investigations?

46 A. That's correct.

47

1 Q. And those investigations involved analysis of
2 materials and preparation of briefs of evidence?
3 A. Yes.
4
5 Q. In 2001, you were engaged as senior investigator in
6 the special crime and internal affairs branch of the NSW
7 Police?
8 A. That's correct. I was actually attached at the end of
9 2000, but I didn't attend until 2001, correct.
10
11 Q. Can you outline what your particular duties were there
12 just in broad terms?
13 A. Essentially, it was larger scale investigations in
14 relation to police corruption.
15
16 Q. In relation to?
17 A. Police corrupt activity, allegations.
18
19 Q. In 2002, you moved back to the Australian Federal
20 Police; is that correct?
21 A. Correct.
22
23 Q. You carried out some duties there for approximately
24 five years?
25 A. Yes, correct.
26
27 Q. Again, that was involved in investigations as well as
28 some tactical response training?
29 A. Yes, as well as some overseas work as well, yes.
30
31 Q. The overseas postings were in the nature of covert
32 investigations?
33 A. Negative. They were capacity development of other
34 police forces in fragile states and in post-war zones.
35
36 Q. You returned to the NSW Police in October 2007 and
37 carried out duties at Lake Macquarie Local Area Command?
38 A. Correct.
39
40 Q. And then later at Port Stephens Local Area Command?
41 A. That's correct.
42
43 Q. For a period that you were at Port Stephens Local Area
44 Command, did you work under Detective Chief Inspector Fox?
45 A. Not directly. But he was certainly one of my
46 superiors, yes.
47

1 Q. For what sort of period did you work at Port Stephens
2 Local Area Command?
3 A. As I recall, it was from April to December 2010.
4
5 Q. Did you get to know Detective Chief Inspector Fox at
6 least to some extent as a colleague?
7 A. Yes.
8
9 Q. How do you describe your relationship with Detective
10 Chief Inspector Fox during that period?
11 A. Look, it was fairly innocuous. He was always pleasant
12 to me and I was always respectful to him. He was a - it
13 was a - there was no direct involvement with him in
14 relation to investigations or anything like that. I would
15 assist him with some computer issues if he needed it, that
16 type of thing.
17
18 Q. At the end of 2010, you transferred to the Newcastle
19 Local Area Command and were promoted to the role of
20 detective sergeant?
21 A. That's correct.
22
23 Q. In late December, we understand from your statement
24 that you met with the crime manager or the then crime
25 manager inspector Wayne Humphrey?
26 A. That's correct.
27
28 Q. Detective Chief Inspector Wayne Humphrey. He
29 appointed you the officer in charge of Strike Force Lantle?
30 A. He did.
31
32 Q. Prior to that time, did you have any knowledge about
33 the operations of Strike Force Lantle?
34 A. I didn't.
35
36 Q. Were you told at the time you were engaged as officer
37 in charge any particular information regarding the
38 confidentiality status of that investigation at least up to
39 that time?
40 A. It was a highly protected investigation, I was told,
41 yes.
42
43 Q. A highly protected investigation.
44 A. Yes.
45
46 Q. Can you outline what that entailed in terms of its
47 availability for review by others within the police force?

1 A. Yes. "Highly protected" by the terms of the e@gle.i
2 database which is used for such an investigation is a
3 category put on an investigation on all documents which
4 fall under that investigation whereby the access to those
5 documents is extremely limited to merely the OIC and those
6 who were attached to it on the e@gle.i database. In this
7 particular case it would have been Detective Chief
8 Inspector Wayne Humphrey, later to be Detective Inspector
9 Graeme Parker and, at that particular time, it was now
10 Assistant Commissioner Max Mitchell and currently
11 Superintendent John Galton.

12
13 Q. Can we take it prior to your having this discussion
14 with Detective Chief Inspector Wayne Humphrey, you didn't
15 have any details about staff allocated to the investigation
16 or the progress of the investigation in any way?

17 A. That's correct.

18
19 Q. You were informed, as you set out in your statement in
20 paragraph 13, that there had been officers allocated to the
21 matter previously - I'm sorry, it is in paragraph 12 of
22 your statement - but they had reported on sick leave and
23 there was ultimately resignations of those officers from
24 the police force. Did you have any information available
25 to you prior to 30 December 2010 to the effect that those
26 officers were likely to leave the force on sick leave?

27 A. I had no idea that they were even on that
28 investigation with the exception of a media article that
29 was published certainly not from any police.

30
31 Q. When you were appointed as officer in charge, you were
32 advised that you could make use of other officers to assist
33 you?

34 A. Yes.

35
36 Q. And you've named those in paragraph 13 of your
37 statement and they were Senior Constable Jason Freney,
38 F-R-E-N-E-Y, and also a plain clothes Senior Constable Troy
39 Dominish?

40 A. Correct.

41
42 Q. Had you worked with those two gentlemen before?

43 A. Never.

44
45 Q. Did you take the opportunity to have them assist you
46 on various tasks as you worked through your time on the
47 Lantle brief?

1 A. Yes.

2

3 Q. As at 30 December 2010 when you discussed the matter
4 with Detective Chief Inspector Wayne Humphrey and your
5 allocation as officer in charge, did he say anything to you
6 regarding Detective Chief Inspector Fox's involvement or
7 otherwise in matters touching on the Lantle investigation?

8 A. No, he didn't.

9

10 Q. Did Detective Chief Inspector Humphrey make any
11 comment to you at any time either negative or positive
12 about Detective Chief Inspector Fox's role relating to
13 issues that would be reviewed by Lantle?

14 A. No.

15

16 Q. Did you have any reason to exclude or refuse to
17 consult with Detective Chief Inspector Fox in relation to
18 any matters he could provide to you by way of assistance?

19 A. Certainly not.

20

21 Q. In paragraph 14 of your statement, you refer to the
22 fact that you were told by Detective Chief Inspector
23 Humphrey when you were engaged that you must not speak to
24 the media about the investigation?

25 A. Yes.

26

27 Q. He specifically mentioned Joanne McCarthy, on your
28 recollection?

29 A. He did.

30

31 Q. Did he say particularly why she was somebody
32 identified as someone you ought not speak to?

33 A. No, he didn't.

34

35 Q. Did you have any understanding as to why you ought not
36 speak to her specifically?

37 A. I didn't have an understanding from him. However,
38 I was aware of the article that had been published by her,
39 so I put two and two together on that basis alone.

40

41 Q. The status of the investigation as "highly protected",
42 does that have any particular implication in terms of media
43 involvement in the general course of matters being
44 investigated by the NSW police force?

45 A. Yes, it does. It is not something to be disclosed to
46 media and by the very fact it is a major investigation, it
47 falls under a specific area of media policy in which

1 something like that shouldn't be spoken about to the media,
2 except through our own corporate spokesperson who, at that
3 stage would have been superintendent Max Mitchell, at that
4 stage, or a nominated commissioned officer. It would be
5 more appropriate - in fact, it would be entirely
6 inappropriate for anyone other than the local area
7 commander or the region commander, in my case, my direct
8 commander, to speak to the media about this matter.

9
10 Q. There was nothing unusual in that particular
11 instruction conveyed to you by Detective Chief Inspector
12 Humphrey?

13 A. No.

14
15 Q. In paragraph 15 of your statement, I just want you to
16 explain one particular comment you make there, which is the
17 last sentence of paragraph 15. You state:

18
19 *It is my view that where a reasonable*
20 *direction is issued by a senior officer as*
21 *it relates to a highly protected*
22 *investigation, extraneous issues could*
23 *exist, however, it would have been*
24 *inappropriate for me to question the*
25 *judgment or direction of a senior police*
26 *officer in such circumstances.*

27
28 What do you mean by that statement?

29 A. If I've given a direction, it is on a need to know
30 basis. A highly protected investigation is a need to know
31 basis. If I needed to know, they would have told me. If
32 there was aware of issues, I wasn't aware of them, but if
33 they were and I was told, I respected what they told me.

34
35 Q. From your answer, can we take it that you subsequently
36 found out there were some issues, but they weren't of
37 relevance to you at that time?

38 A. That's correct.

39
40 Q. In paragraph 18 of your statement you deal with the
41 question of a meeting that was held on 2 December 2010
42 where issues relating to Strike Force Lantle were
43 discussed. It is evident from your statement you weren't
44 present at that meeting and you're nodding yes?

45 A. Yes, that's correct.

46
47 Q. Do you now recall at what point you viewed the

1 annexure to your statement which is annexure A which is the
2 minutes of that particular meeting?

3 A. I don't recall exactly what month I would have viewed
4 it. It would have been early on.

5

6 Q. Early on in your review of the holdings of the Lantle
7 brief?

8 A. That's correct.

9

10 Q. Did anyone draw to your attention there was any
11 particular animosity or problem arising from the 2 December
12 meeting?

13 A. No.

14

15 Q. When you read the investigator's note which is
16 annexure A, was there anything in there that surprised you
17 in terms of general police approach to investigations of
18 this nature and background?

19 A. No.

20

21 Q. In paragraph 19 of your statement, you talk about
22 there being no restriction placed upon you that prevented
23 you from seeking to obtain any information from Detective
24 Chief Inspector Fox. Can I ask you this question: When
25 did you become aware that Detective Chief Inspector Fox was
26 someone who had carried out at least some initial
27 investigatory steps that were relevant to the material you
28 were examining?

29 A. Look, the investigator's note for 2 December 2010
30 spoke fairly clearly that DCI Fox had an interest and
31 wanted to continue an interest and was asked to disclose
32 all information to the team. So it was basically from that
33 point on.

34

35 Q. Did you form a view that all the information that
36 Detective Chief Inspector Fox could provide had already
37 been provided?

38 A. Yes. In fact, following the investigator's note, I
39 had no other reason to believe it hadn't been provided. He
40 had been asked and I had no other document or reason to
41 believe he hadn't disclosed it.

42

43 Q. Because of issues that are relevant to the matter
44 we're examining, I'll just ask a few further questions on
45 that subject matter. Did anybody discourage you from
46 approaching Detective Chief Inspector Fox by way of making
47 negative comments regarding his involvement in these

1 matters?
2 A. No. The only discouragement would have been a later
3 investigator's note where he was actually nominated as
4 being a possible leak in relation to information.
5
6 Q. That subsequent investigator's note, are you able to
7 place that in time?
8 A. Yes. It was 14 April 2011, from memory.
9
10 Q. That was subsequent to the decision on 2 December and
11 the meeting where, as you read the investigator's note that
12 we have just been referring to, Detective Chief Inspector
13 Fox was advised that the investigation would be conducted
14 at the Newcastle Local Area Command?
15 A. Yes, he was.
16
17 Q. In terms of one local area command, in this case,
18 Newcastle, being allocated to run an investigation of this
19 nature, is there anything unusual in that approach that one
20 local area command will be in charge?
21 A. No. In fact, it would make sense that that was
22 actually conducted by Newcastle because the concealed
23 offences predominantly occurred in the Newcastle Local Area
24 Command.
25
26 Q. Can I ask you when you first contacted Detective Chief
27 Inspector Fox to see if there was anything further that he
28 could assist you with and why you made that particular
29 contact at that time?
30 A. Look, I recall there was a phone conversation between
31 myself and DCI Fox on 15 February in which case - during
32 which he gave me a phone number for (name suppressed) [BI]
33 so I could actually speak with him. However --
34
35 Q. What year was that? Sorry to cut across you.
36 A. That would have been 2012. However, the first contact
37 that I had with DCI Fox in relation to anything further was
38 during April 2012..
39
40 Q. Was there any reason why you did not contact Detective
41 Chief Inspector Fox earlier than February 2012?
42 A. No. As my understanding was, he had disclosed all the
43 information. I had no other reason to believe that he
44 hadn't.
45
46 Q. There were two separate drafts of the terms of
47 reference for Strike Force Lantle; is that correct?

1 A. Correct.
2
3 Q. Are you able to assist with the date on which the
4 first terms of reference became objective?
5 A. The first terms of reference would have become
6 operative in October 12, 2010.
7
8 Q. And you've looked at records that form the basis for
9 that view?
10 A. Yes.
11
12 Q. Here was an amendment to the term of reference the
13 following year, was there?
14 A. Yes, there was.
15
16 Q. Are you able to assist with the date for those further
17 amended terms of reference?
18 A. Yes. It was from the date that DI Jacob consulted
19 with me and DI Parker on, from memory, 11 May 2011.
20
21 Q. The call in February 2012 with Detective Chief
22 Inspector Fox that you refer to, forgive me if I missed the
23 reason for the call, was that prompted by you or did the
24 call come in to you?
25 A. No, it was a call dialled by Detective Inspector
26 Parker and on our return trip from Sydney, return journey
27 from Sydney. And that was simply to see, to ascertain
28 whether there was absolutely any other information that
29 DCI Fox may have been able to assist the investigation with
30 to be absolutely clear that we had covered everything in
31 relation to it.
32
33 Q. We're talking about February 2012; is that right?
34 A. I'm sorry, no. Sorry, which phone call are you
35 talking about?
36
37 Q. I was talking about the February 2012 one.
38 A. Sorry, my mistake.
39
40 Q. We'll come back to the April phone calls. February
41 2012 you said you made contact or contact had been made
42 with you?
43 A. I can't absolutely recall whether it was myself who
44 contacted Detective Chief Inspector Fox or he contacted me
45 initially, but the actual phone call to where I received
46 that phone number, I can't recall how it came about, but he
47 actually contacted me.

1
2 Q. The contact was out of the blue, as it were?
3 A. Again, I can't recall as to whether how that was
4 precipitated but he did actually telephone me on that day.
5
6 Q. You did give some evidence about what you discussed.
7 What was that matter that you discussed with him?
8 A. Essentially, I got a phone number for [BI].
9
10 Q. He was somebody you wanted to speak to?
11 A. Yes. I needed to ascertain something that relates to
12 T2.
13
14 Q. You noted that on a date in April Detective Chief
15 Inspector Parker and you made a phone call together?
16 A. Yes, we did.
17
18 Q. To Detective Chief Inspector Fox?
19 A. Yes.
20
21 Q. You've referred to at least one phone call in your
22 statement. Can I ask you just to clarify the dates of
23 these exchanges. Would you mind turning to annexure D of
24 your statement, just to clarify some dates. Down the
25 bottom of the page there's some pagination. This has got
26 page 264 down the bottom centre of the page.
27 A. Yes, ma'am.
28
29 Q. Do you see that that appears to be email exchanges
30 between you and Peter Fox? Peter Fox sent something
31 directly to Detective Chief Inspector Parker. They appear
32 to be dated 2 April 2012?
33 A. Yes, ma'am.
34
35 Q. It is not evident on those documents what prompted
36 that email exchange. Are you able to assist with whether
37 there was a phone call, a discussion, that prompted that
38 email exchange on 2 April?
39 A. It would be hearsay what I'm going to say, but
40 essentially Detective Inspector Parker informed me that he
41 had a phone conversation with DCI Fox.
42
43 Q. There is no need to go any more detail. Detective
44 Chief Inspector Parker will be called and he'll give
45 evidence on that. You see at the bottom of 264 in the
46 email of Detective Chief Inspector Fox to yourself and
47 Detective Chief Inspector Parker, there is mention of

1 annexing a report that Detective Chief Inspector Fox said
2 he sent to region in December 2010. I don't want you to go
3 into any detail in relation to what was in the report, but
4 can I ask you this question: are you able to say whether
5 before 2 April you had read that particular report which,
6 although it states was December, was a long report of
7 25 November 2010 authored by DCI Fox?

8 A. Yes ma'am, I had.

9

10 Q. Are you able to say when you had read that report?

11 A. It was definitely in the early days and in fact that's
12 evidenced by my reply to DCI Fox above on the same page.

13

14 Q. Your reply above is as follows:

15

16 *Hi Pete,*

17 *Yes, I have that report dated 25/11/10 and*
18 *am aware of that passage. However, Graeme*
19 *mentioned you interviewed CLARKE???*

20

21 A. Correct.

22

23 Q. That doesn't, with respect, give you a clear
24 indication as to how long before this particular date you
25 read it?

26 A. Sure.

27

28 Q. It is your recollection, is it, that you read it some
29 time before?

30 A. Yes.

31

32 Q. Are you able to say whether it was soon after you were
33 engaged as officer in charge or you're just not able to
34 identify?

35 A. No, it was soon after. I just can't say whether it
36 was in the first few weeks or - it was some time in the
37 first few weeks.

38

39 Q. In your hearing, did Detective Chief Inspector Parker
40 say to Fox at any time that he had not read - "he" being
41 Parker - the 25 November 2010 report before April 2012?

42 A. Sorry, had DI Parker?

43

44 Q. Had not read; did Parker say in your hearing that he
45 had not read that report?

46 A. No, no, I didn't hear the conversation between him and
47 Detective Chief Inspector Fox.

1
2 Q. In annexure B of your statement, there is an email
3 from Detective Chief Inspector Fox to Detective Chief
4 Inspector Parker and yourself attaching a summary of
5 various matters. Do you see that?
6 A. This was on the date of? This is very, very --
7
8 Q. The date is 5 April 2012 and it is annexure B to your
9 statement.
10 A. Yes, ma'am.
11
12 Q. The bottom half of page 252.
13 A. Yes, ma'am.
14
15 Q. The text that I'm referring to is over the page,
16 headed with the word "Graeme"?
17 A. Yes ma'am.
18
19 Q. It goes over to the following page as well. Is it
20 fair to say that that's an outline that you and Detective
21 Chief Inspector Parker received from Detective Chief
22 Inspector Fox where he raised certain matters with you and
23 Detective Chief Inspector Parker?
24 A. Yes, ma'am.
25
26 Q. Did you form a plan as to how best to follow through
27 those matters that had been raised? I don't want to you go
28 into any detail about the subject matter, but just in terms
29 of the plans if you prepared one or discussed one with
30 Detective Chief Inspector Parker as to how you should deal
31 with these matters that had been raised in this email from
32 Detective Chief Inspector Fox?
33 A. Well, it was just something I took on board to do
34 myself actually. I was a little bit surprised by the fact
35 that we received this because we had a phone call the day
36 before saying that he had nothing more; and yet, the next
37 day we get this esoteric email saying or outlining the
38 content of this particular email, so I actually took it
39 upon myself to break that down, yes.
40
41 Q. Thank you for reminding me about the phone call. If
42 the witness could be shown the term of reference 1 tender
43 bundle, please. Tab 123. It is in volume 3.
44 A. 123?
45
46 Q. Volume 3, tab 123?
47 A. Sorry, yes. Diary entries?

1
2 Q. Yes, that's it. Behind tab 123 is your diary from
3 2012, an extract from it, I should say?
4 A. Yes, ma'am.
5
6 Q. There's an entry dated 4 April 2012; do you see?
7 A. Yes, ma'am.
8
9 Q. Is that your handwriting next to "12 noon"?
10 A. Yes, it is.
11
12 Q. Can you just read on to the record what you have
13 notated there?
14 A. I had "12.08", which was the time of the phone call --
15
16 Q. Yes.
17 A. -- and the time he actually said this. I've got "PC",
18 which stands for phone call, I've got "Parker to Fox", and
19 then I've got - and this is by Fox:
20
21 *"No. I've got nothing more. I didn't do*
22 *an interview with Clarke. I only had an*
23 *off the record chat to him that wasn't*
24 *recorded."*
25
26 Q. You put inverted commas around the statement from the
27 word "No" to the word "recorded". Why is that?
28 A. Because that's exactly what he said at the time he
29 said it. I was sitting in the passenger's seat and I wrote
30 it down immediately to make sure nothing was lost in
31 translation.
32
33 Q. Why did you do that?
34 A. To have a clear and concise record of what was said,
35 to place that on the record on the database for later
36 reference should it be required.
37
38 Q. I'm just going to ask you to turn back to your
39 statement paragraph 24. You make the comment that you
40 wanted to make sure you'd exhausted all available avenues
41 of investigation and you also wanted to ensure that any
42 information in the possession of Detective Chief Inspector
43 Fox, whether by way of documentation or otherwise, had been
44 disclosed. My question is: did you by this time, that is,
45 April 2012, become aware there had been some previous
46 issues regarding disclosure of documentation or it's just
47 your terminology in that paragraph?

1 A. That's just my terminology.
2
3 Q. You had no reason to expect or suspect that Detective
4 Chief Inspector Fox was holding back any information that
5 you needed?
6 A. No. In fact, that was part of my investigation plan,
7 it was to in fact contact Detective Chief Inspector Fox in
8 the interview investigation to ensure that in fact I hadn't
9 missed anything along the way.
10
11 Q. I'm going to ask you to turn to annexure E of your
12 statement, which is the text of an email you sent and the
13 reply provided by Detective Chief Inspector Fox. Perhaps
14 for completeness, before we go to that annexure E, if you
15 wouldn't mind looking at your initiating email, which is
16 behind tab D and it's got "page 269" down the bottom
17 centre.
18 A. Yes, ma'am.
19
20 Q. That's an email, it appears, from you to Detective
21 Chief Inspector Fox where you have copied in Graeme Parker
22 and John Galton?
23 A. Yes, ma'am.
24
25 Q. Can you outline who John Galton is?
26 A. John Galton is actually my commander in the Newcastle
27 LAC.
28
29 Q. Why did you include him in this particular email?
30 A. Because this is a fairly significant investigation for
31 the local area command. Whilst it is complex, it certainly
32 has a high community concern and a corporate risk. So
33 essentially, based on that alone, the fact it was a major
34 investigation, it's only prudent and proper that he should
35 be kept across the progress of that investigation and where
36 it is at.
37
38 Q. This email was sent to Detective Chief Inspector Fox
39 at 6.45am on 10 April 2012 --
40 A. Yes, ma'am.
41
42 Q. -- according to the entry at the top there; is that
43 correct?
44 A. Yes, ma'am.
45
46 Q. Over the page, you outline certain matters where you
47 request specific responses from Detective Chief Inspector

1 Fox about matters he had raised in his previous summary
2 email?

3 A. Yes, ma'am.

4

5 Q. I don't want you to go into the content of the matters
6 you raised for various reasons, but why did you do this by
7 way of email in particular?

8 A. As I've actually said there, I wanted to make sure it
9 was properly and thoroughly clarified and not lost in
10 translation. What I mean by that I need to have a record -
11 I like to operate with facts - and I wanted to make sure
12 that what I was operating on was clearly and concisely what
13 he in fact told me. Those are his answers, not my
14 interpretation.

15

16 Q. I'm going to get you to turn to annexure E. There's
17 some water in the witness box. Please take a break and
18 pour yourself a glass.

19

20 Do you recollect that Detective Chief Inspector Fox
21 actually sent a reply to you where his replies were
22 interspersed with your questions in red type?

23 A. Yes, they were.

24

25 Q. Would it assist you to look at a copy that's actually
26 in colour of those matters?

27 A. It most certainly would.

28

29 Q. I'll just hand that up to you for your particular use.
30 I'm going to go to only some matters as certain parts of
31 what's recorded may well either be irrelevant to our terms
32 of reference or relating to matters that don't need to be
33 and ought not be pursued at least in your evidence today.

34

35 In broad terms, were the questions that you posed
36 answered in a way that allowed you to satisfy yourself that
37 there were no other channels of inquiry that you ought to
38 pursue based on matters raised by Detective Chief Inspector
39 Fox?

40 A. Just to be complete with that answer, yes, ultimately,
41 yes. I did follow a line, but ultimately, yes.

42

43 Q. Was the line to do with an allegation about a brief
44 having been prepared regarding former Bishop Malone?

45 A. That was one concern that I followed - make that two
46 items I followed. I followed an interview with --

47

1 Q. Let's just deal with the Bishop Malone brief issue.
2 In the answers provided by Detective Chief Inspector Fox,
3 which occur under question 3.1, and just ahead of where
4 question 4 is entered in your document there; do you see
5 that?
6 A. Yes, ma'am.
7
8 Q. There is a paragraph commencing with "I did prepare a
9 brief against Bishop Malone..."; do you see that?
10 A. Yes.
11
12 Q. And:
13
14 *... and spoke to the ODPP but we decided*
15 *against charging him on the basis of*
16 *keeping him & others on-side to give*
17 *evidence against Fletcher.*
18
19 A. Yes.
20
21 Q. Did that statement by Detective Chief Inspector Fox
22 lead you to believe that there was in fact a formal brief
23 prepared by him regarding those matters?
24 A. Absolutely.
25
26 Q. Did you go and look for the brief?
27 A. Ultimately, yes.
28
29 Q. Did you find one?
30 A. No.
31
32 Q. Did you follow up with Detective Chief Inspector Fox
33 on that particular issue subsequently?
34 A. I tried to.
35
36 Q. Have a look - we might as well finish off on that
37 particular issue while we're looking at it - at annexure F
38 to your statement.
39 A. Yes.
40
41 Q. Do you see that's an email from you to Detective Chief
42 Inspector Fox dated 3 May 2012?
43 A. Yes, I just can't read the text, though. It is fairly
44 blurry.
45
46 Q. All right. Can you read it sufficiently to make that
47 out? If you can't, I'll pass up --

1 A. I actually can't.
2
3 Q. Just for the officer's assistance, I'll pass up
4 annexure F from my copy.
5 A. Thank you. Yes, ma'am.
6
7 Q. Do you see that's an email from you to Detective Chief
8 Inspector Fox?
9 A. Yes, ma'am.
10
11 Q. Dated 3 May 2012?
12 A. Yes.
13
14 Q. The purpose of that email is to chase up where this
15 brief may be and where you would be able to find relevant
16 entries in the NSW Police Force records?
17 A. Most definitely.
18
19 Q. And you didn't receive any reply to this email; is
20 that the position?
21 A. That's correct.
22
23 Q. Did it subsequently come to your attention that there
24 was a reason why you didn't receive a reply?
25 A. Yes. I actually made follow-up inquiries to try and
26 contact DCI Fox and found he was actually on sick leave.
27
28 Q. Could you just turn up that --
29
30 MR SKINNER: I didn't hear that answer, Commissioner. I
31 wonder whether we could hear it again.
32
33 THE COMMISSIONER: Q. Are you able to render it again,
34 sergeant, or will we have it read back?
35 A. Absolutely, ma'am. I tried to follow up on whether -
36 in relation to this with DCI Fox; however, I found out he
37 was on sick leave.
38
39 MR SKINNER: Thank you.
40
41 THE COMMISSIONER: Thank you.
42
43 MS LONERGAN: Q. Did you subsequently become aware of
44 the reason why or a reason why you didn't receive any
45 particular email reply at least from Detective Chief
46 Inspector Fox?
47 A. Just the fact that he was on sick leave, ma'am.

1
2 Q. And that's your understanding as to the position?
3 A. Yes.
4
5 Q. Just for your assistance, would you mind having a look
6 at tab 132 of volume 3 of the bundle of material.
7 A. 132?
8
9 Q. 132. Do you see, right at the top of the first page
10 that appears behind that tab, you've copied in Ma'am York
11 recording that particular email that you sent to DCI Fox?
12 A. Yes.
13
14 Q. You stated as follows:
15
16 *I did receive a response, however, when*
17 *tested, nothing of substance emanated.*
18
19 You go on to say:
20
21 *I had attempted to elicit response to*
22 *further [questions], however, his email*
23 *bounced back.*
24
25 A. Yes, ma'am.
26
27 Q. :
28
29 *I made [inquiries] at that point and*
30 *ascertained he was off on sick report.*
31
32 A. Exactly.
33
34 Q. In your experience, if an officer's inbox gets
35 over-full, you can have a situation where an email bounces
36 back and it does not in fact reach the inbox of the
37 officer?
38 A. That's correct, it's automated.
39
40 Q. Have you been informed by any reliable source that
41 that's in fact what happened here, or you're only able to
42 state as much as you have with this particular email?
43 A. What's happened - that the email bounced back or --
44
45 Q. Whether Detective Chief Inspector Fox ever received
46 the email or whether that email itself in fact bounced
47 back?

1 A. No, that email, he wouldn't have received it because
2 the email, the fact that it bounced back from my
3 recollection his inbox was full and that was the result of
4 him being on sick leave and it would have filled up fairly
5 quickly.
6
7 Q. In your view, he would not have received that email?
8 A. That's correct.
9
10 Q. Probably?
11 A. Correct.
12
13 Q. Did you have any opportunity to telephone him
14 subsequent to learning he was on sick report to ask him any
15 further questions about that particular matter; that is,
16 the brief of evidence that is alleged to have existed
17 regarding former Bishop Malone?
18 A. No, because on his return from that particular stint
19 of sick leave, he'd taken another stint of sick leave. So
20 I didn't get that opportunity.
21
22 Q. It is not appropriate for an officer to contact an
23 officer on sick leave; is that correct?
24 A. Certainly not.
25
26 Q. You mentioned there was another matter that you
27 followed through from the material that had been raised by
28 Detective Chief Inspector Fox in his email responses to
29 you. What was that?
30 A. That was an interview with another member of the
31 clergy.
32
33 Q. There's no need to go into detail about which member
34 of the clergy that was, but may we take it that it was
35 helpful for you to have that information from Detective
36 Chief Inspector Fox so you could pursue that line of
37 inquiry?
38 A. It was a line of inquiry but nothing emanated from it,
39 no.
40
41 Q. But you were able to satisfy yourself that a further
42 line of inquiry that had been suggested would be pursued
43 and inquiry completed?
44 A. Yes.
45
46 Q. Can you articulate what line of inquiry that was? Was
47 that about Bishop Clarke?

1 A. No, ma'am.

2

3 Q. In paragraph 31 of your statement, detective sergeant,
4 you outline the amount of material that you collated to
5 comprise the brief of evidence that resulted from your
6 investigations in Strike Force Lantle?

7 A. Yes, ma'am.

8

9 Q. It is not appropriate for us to go into any details
10 about the content of that material, but you have observed
11 that the brief of evidence was 2,970 pages in total and you
12 prepared a 255-page executive summary that summarised that
13 material in the brief in the evidence?

14 A. That's correct, ma'am.

15

16 Q. And you conducted some 19 records of interview; does
17 that sound about right?

18 A. I think it was probably in the early 20s, ma'am,
19 initially.

20

21 Q. You are satisfied that you followed through
22 appropriately the matters that Detective Chief Inspector
23 Fox raised as items that were worth pursuing to the extent
24 they were relevant to the term of reference of Strike Force
25 Lantle?

26 A. I did.

27

28 MS LONERGAN: Those are my questions, Commissioner.

29

30 THE COMMISSIONER: Mr Cohen?

31

32 MR SAIDI: I omitted, although I understood it to be the
33 case, that this witness would be noted as taking advantage
34 of the provisions of section 23.

35

36 THE COMMISSIONER: Thank you, Mr Saidi. That is noted.
37 Thank you.

38

39 <EXAMINATION BY MR COHEN:

40

41 MR COHEN: Q. In your statement, you have given evidence
42 about a number of matters concerning Detective Chief
43 Inspector Fox. You have identified, in particular at
44 paragraph 24, as you put it, you wanted to ensure that you
45 had exhausted all available avenues of investigation. Do
46 you see that?

47 A. Sure.

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Q. You go on to say:

I also wanted to ensure that any information in the possession of [DCI] Fox ... had been disclosed.

Do you see that?

A. Yes.

Q. That speaks as at April 2012, does it not?

A. Yes, it does.

Q. You became the officer in charge of Strike Force Lantle in approximately April 2011, did you not?

A. No.

Q. I see. When did you become the officer in charge?

A. December 2010.

Q. Could you explain to the Commissioner, then, why you waited 15 months to make a contact of this type to Detective Chief Inspector Fox?

A. As stated earlier, it was part of my investigation plan. I had no other reason to contact DCI Fox prior to that.

Q. You say you wanted to be sure, in effect, at the end of the process that you, to put in the vernacular, had shaken the trees, but wouldn't it be more appropriate to do it at the beginning rather than the end of the process?

A. No.

Q. No?

A. No.

Q. How could you be sure you had received all the material information that you believed might be out there if you didn't do it at the beginning of process?

A. Because Mr Cohen, as I said earlier, the investigator's note from 2 December 2010 indicated he had been asked to hand over all information to the team, disclose all information to the team. I had no other information to suggest that he hadn't handed over that information.

Q. Well, you're just making an assumption there was

1 nothing else, having read a report by a third party; is
2 that right?
3 A. It is not an assumption. It is based on the
4 investigator's note.
5
6 Q. I see. That was then Detective Sergeant Quinn, wasn't
7 it?
8 A. That's correct.
9
10 Q. He had already left the force by then, I take it; is
11 that right?
12 A. No.
13
14 Q. No?
15 A. No.
16
17 Q. Did you speak to him about the investigator's note?
18 A. No, I didn't need to.
19
20 Q. Is it not a good idea to have at least a corridor
21 conversation with a colleague about the gist of such
22 matters?
23 A. I didn't need to speak to him about the investigator's
24 note.
25
26 Q. That wasn't an answer to my question. Isn't it a good
27 idea at least to have a corridor conversation with him?
28 A. Well, I didn't speak to him about the investigator's
29 note.
30
31 Q. I think we're at cross-purposes. I'm asking you:
32 isn't it a good idea to have a conversation about such
33 matters with a colleague who is in the same proximity, the
34 same building, and able to give you any bits of information
35 that may be useful?
36 A. If there's something to converse about, yes.
37
38 Q. So you decided there was nothing, did you?
39 A. In relation to that investigator's note, no.
40
41 Q. On the face of the document alone?
42 A. Yes.
43
44 Q. And that's where it began and ended, was it, as far as
45 you were concerned?
46 A. I don't understand what you're asking me.
47

1 Q. Well, you looked at the document. The document spoke
2 for itself. There was nothing else to be discussed. Is
3 that the long and short of it?

4 A. That's correct.

5

6 Q. There could be no other source of information
7 available to you than what was disclosed in that way; is
8 that right?

9 A. I was satisfied with what was in that document.

10

11 Q. Isn't that being just a bit bureaucratic about the
12 approach?

13

14 MR SAIDI: I object. The terms of reference relate to
15 whether or not DCI Fox was asked to cease investigating.
16 It does not go into whether or not this police officer
17 adequately, improperly or negligently investigated during
18 the course of Strike Force Lantle. The Strike Force Lantle
19 material is material which is specifically not coming
20 before this inquiry for investigation or in terms of any
21 information to be provided. The issue of relevance clearly
22 arises.

23

24 THE COMMISSIONER: Thank you Mr Saidi. Your question
25 I think Mr Cohen, was?

26

27 MR COHEN: "Isn't that approach just a bit bureaucratic in
28 the circumstances?"

29

30 THE COMMISSIONER: Bureaucratic. I don't think it is
31 particularly helpful to me, Mr Cohen. Perhaps you could
32 put precisely why it was that you suggest it may have been
33 propitious for the witness to speak to Mr Quinn.

34

35 MR COHEN: Thank you, Commissioner. I'll approach it this
36 way.

37

38 Q. You don't exclude the possibility, do you detective
39 sergeant, that there might be some other information you
40 just don't know about that, notwithstanding your assumption
41 that there wasn't, that there was something unaware, to
42 you, that was in the possession of somebody else, like
43 Detective Sergeant Quinn, for example?

44 A. No, because the holdings for that investigation would
45 have been provided to me by DCI Humphrey. I had no reason
46 to believe that Detective Senior Sergeant Quinn would have
47 held any of those holdings. It is not normal business.

1
2 Q. I beg your pardon?
3 A. It is not normal business.
4
5 Q. If something is not on the holdings, it doesn't exist;
6 is that your proposition?
7 A. If it is not in the holdings or e@gle.i, that's
8 correct - at that particular time at that station, yes.
9
10 Q. No other holdings - no chance that there could be
11 information outside the holdings that could be of any use
12 to you; is that right?
13 A. That's not what I said.
14
15 Q. Well, what do you mean?
16 A. I followed up my investigation to get what I needed
17 for that investigation. I didn't need to speak to
18 Detective Senior Sergeant Quinn in relation to that
19 investigator's note.
20
21 Q. Is that because you'd already spoken to Detective
22 Chief Inspector Humphrey?
23 A. I had spoken to Detective Chief Inspector Humphrey
24 when he handed the brief of evidence over to me.
25
26 Q. My question was: was that because you had spoken to
27 Detective Chief Inspector Humphrey?
28 A. Was what because I'd spoken to him?
29
30 Q. That there was no other person to whom you needed to
31 speak?
32 A. That doesn't make sense because that's part of my
33 investigation, is to speak to people.
34
35 Q. You got your briefing initially, didn't you, from
36 Detective Chief Inspector Humphrey?
37 A. Yes, I did.
38
39 Q. He provided you with a verbal briefing, I take it?
40 A. Yes, he did.
41
42 Q. It wasn't just a desktop note?
43 A. No.
44
45 Q. It wasn't just an investigator's note?
46 A. No.
47

1 Q. All right. If can you get information from Detective
2 Chief Inspector Humphrey in that fashion, why not, for
3 example, from Detective Sergeant Quinn?

4 A. Well, I didn't say I didn't receive any information
5 from Detective Sergeant Quinn, but I had no need to speak
6 to him about that investigator's note.

7

8 Q. You just exclude on any basis any possibility of him
9 having information or some other third party beyond
10 Detective Chief Inspector Humphrey having some information?

11 A. I hadn't excluded anybody.

12

13 Q. You just didn't need to speak to anybody?

14 A. Not in relation to that investigator's note, no.

15

16 Q. This discussion that was had with Detective Chief
17 Inspector Fox that you've referred to that was in February
18 of 2012, it was a case of you wanted information - I'm
19 sorry, excuse me, detective sergeant. I just need to stop
20 and ask the Commissioner something.

21

22 MR COHEN: Reference has been made to a name. I'm not
23 quite sure whether or not that name is in the course of
24 this investigation properly anonymised or not. Before
25 I inadvertently step on a landmine, can I check to see if
26 that's the case. The name used before - excuse me can
27 I have the benefit of a discussion with Ms Lonergan?

28

29 THE COMMISSIONER: Yes.

30

31 (Mr Cohen and Ms Lonergan confer)

32

33 MR COHEN: Q. You're clearly not aware of this process,
34 detective sergeant, but there are a series of pseudonyms
35 used to anonymise persons. You made reference to a name
36 that name is the subject of the a pseudonym. Do you have a
37 list of pseudonyms with you in the witness box?

38 A. Yes.

39

40 Q. Number 32, if I could assist you to direct your
41 attention to that. I'm sorry if this appears a little
42 strange, but we just need to be careful how we treat this.
43 I think you'll understand why.

44 A. Sure.

45

46 Q. Do you see the reference to the pseudonym applied to
47 the name that's on the list as number 32?

1 A. Yes.
2
3 Q. That's the person who whom you referred earlier, isn't
4 it?
5 A. Yes, it is.
6
7 Q. The pseudonym there is [BI].
8 A. That's correct.
9
10 Q. Having established that much, we can refer to him in
11 that way in this discussion.
12
13 MS LONERGAN: Commissioner, may I get a non-publication
14 order over the name that was previously uttered and ask
15 that the pseudonym [BI] be substituted, please.
16
17 THE COMMISSIONER: Yes, thank you. I make a
18 non-publication order in relation to the name previously
19 uttered and substitute it with the pseudonym [BI].
20
21 MR COHEN: Thank you, Commissioner, for allowing me to set
22 the scene.
23
24 THE COMMISSIONER: Thank you.
25
26 MR COHEN: Q. Detective sergeant, the reference you made
27 in your evidence earlier was to the person we will refer to
28 as [BI]. In the context of your conversation with
29 Detective Chief Inspector Fox in February 2012, you made
30 the contact by telephone to him, didn't you?
31 A. Well, all I can recall is he contacted me and gave me
32 that particular person's phone number.
33
34 Q. Isn't it the case that in fact you contacted him?
35 You were looking for the phone number for [BI] and, having
36 called him, you asked him for that number and he gave it to
37 you; isn't that right?
38 A. I don't recall actually asking him for anything, but
39 I could have asked him for a contact of some description,
40 yes.
41
42 Q. The situation was that you didn't know how to contact
43 [BI] and you had been told by some third party that DCI Fox
44 could assist you in that endeavour. That's what happened,
45 isn't it?
46 A. I don't know where you get that from.
47

1 Q. Pardon me?
2 A. I don't know where you get that from because I have no
3 recollection of that.
4
5 Q. If you have no recollection, it is entirely possible
6 it happened that way, isn't it?
7 A. I don't believe it did.
8
9 Q. I see. You have no recollection but you don't believe
10 it did; is that right?
11
12 MR SAIDI: He said he had no recollection of that
13 occurring.
14
15 THE COMMISSIONER: Yes.
16
17 MR COHEN: Q. Let me put it to you that that's what did
18 happen. When you made the contact, Detective Chief
19 Inspector Fox obliged with providing the information you
20 sought; isn't that happened?
21 A. He did give me a phone number, that's correct.
22
23 Q. Sorry?
24 A. Yes, he gave me a phone number. That's what I said,
25 yes.
26
27 Q. There was no reluctance to help, was there?
28 A. No.
29
30 MR COHEN: Excuse me, Commissioner, I just need a moment.
31 The further redacted statement we received in morning has
32 excised a great dollop of material. I just need to, if
33 I may, have a moment to rejig my approach.
34
35 Q. You make reference in paragraph 25 to annexure C. It
36 is the case that annexure C has been redacted out. It
37 doesn't exist, but you do, nonetheless, have evidence there
38 to the effect that you prepared a document headed
39 "Executive summary"; is that right?
40 A. That's correct.
41
42 Q. Who was the executive for whom you were summarising?
43 A. I'm not sure I should be answering that if it's been
44 redacted.
45
46 Q. That question is perfectly open. I don't hear any
47 objections. Perhaps you could answer it.

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MR SAIDI: Let me formally object, Commissioner.
I understand that material in that annexure is
confidential. I rise to my feet, but I'll leave it to
counsel assisting as to whether or not it should proceed.

THE COMMISSIONER: Thank you, Mr Saidi.

MS LONERGAN: Commissioner, our submission is that that
question would be permissible but any question that
requests any information about the content other than
what's revealed already in that paragraph in relation to
Detective Chief Inspector Fox would not be permissible.

THE COMMISSIONER: Thank you, Ms Lonergan.

Q. In that case, sergeant, would you answer the question.
A. It was for Deputy Commissioner Nick Kaldas.

MR COHEN: Q. That occurred in late September 2012?
A. Yes.

Q. Was that a consequence of the fact that there was a
public meeting in early September 2012 sponsored by the
Newcastle Herald called "Shine the Light"?
A. Part thereof, yes.

Q. Sorry?
A. Part thereof.

Q. What was the other part that wasn't thereof?
A. I was requested to provide a summary.

Q. Of what?
A. Of my dealings with Mr Fox prior to Mr Kaldas visiting
Mr Fox.

Q. You dropped your voice right at the end. Prior to who
visiting?
A. Prior to Deputy Commissioner Kaldas conversing with
DCI Fox, he required a summary in relation to my dealings
with him in relation to this job.

Q. I see. That was prior to Deputy Commissioner Kaldas
extending an apology to Detective Chief Inspector Fox, was
it?
A. You'd have to ask Mr Kaldas about that.

1
2 Q. Yes. Can I draw your attention, if I may, to your
3 paragraph in your statement 29?
4 A. Yes.
5
6 Q. Do you see that refers to the email to which you were
7 taken by my learned friend Ms Lonergan which is, I believe,
8 behind tab 132. Do you recall that document to which you
9 were taken?
10 A. Yes.
11
12 Q. This paragraph refers to it. Your evidence in that
13 paragraph is that you sent a further email, you annexed a
14 copy of the email, which is annexure F, and then you say
15 you did not get a response to it. That's just a little
16 disingenuous, isn't it?
17 A. I don't understand your question.
18
19 Q. Well, isn't it the case that you were aware at the
20 time that you didn't get a response to it because the email
21 didn't arrive? Isn't that right?
22 A. I said I didn't get a reply because it wouldn't have
23 been received by DCI Fox. I gave that in evidence.
24
25 Q. Isn't it just a little disingenuous to say you didn't
26 get a response when in fact you did and the response was
27 that the email didn't get there?
28 A. Yes, and I would have evidenced that by attaching the
29 email saying it bounced back.
30
31 Q. You didn't say that in your paragraph. What stopped
32 you saying, "I didn't get a response because the email
33 didn't arrive"?
34 A. I didn't get a response.
35
36 Q. I'll put the question one more time. It's just a bit
37 disingenuous to put it that way, isn't it?
38 A. No, it's true. I didn't get a response.
39
40 Q. It is true as far as it goes, isn't it?
41
42 MR SAIDI: Commissioner, there's a limit to how many times
43 my friend can keep asking the same question when he is
44 getting the same answer.
45
46 THE COMMISSIONER: Yes. You've made your point, I think,
47 Mr Cohen.

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MR COHEN: I am indebted to you, Commissioner. I get the message. I shall carry on. Excuse me, Commissioner, I'm just checking my notes.

Q. In an answer you gave to Ms Lonergan, when she was putting a question to you about whether or not Detective Inspector Parker said that he had not read the report by DCI Fox of 25 October 2010, I would like to check your response because, as I heard it, it was slightly equivocal. Did you say in response to my learned friend's question that "No, he did not say it"; or "No, I did not hear the conversation."

A. First of all, that report wasn't 25 October 2012. It was 25 November 2012. I said that I actually didn't hear that conversation.

Q. That was your evidence?

A. With DCI Fox.

Q. So there was no hearing. Thank you; I'm grateful for that. The conversation about which this arose in the first instance was after an email that had been provided by Detective Chief Inspector Fox to Superintendent Galton, was it not.

MS LONERGAN: There's a lack of clarity about what conversation is being referred to. The only conversation on the table at the moment is the one that this witness did not hear. Could that be clarified.

MR COHEN: I take my learned friend's point.

Q. The questioning Ms Lonergan put to you, if I can summarise, in the Parker conversation with Detective Chief Inspector Fox, was the conversation, was it not, in the motor vehicle; is that correct? No?

A. In relation to the report?

Q. Yes.

A. No.

Q. I'm sorry, I beg your pardon. The conversation that was held by Detective Chief Inspector Fox and Detective Chief Inspector Parker in the motor vehicle when you were travelling back from Sydney in April 2011, was it?

A. 2012.

1
2 Q. 2012, sorry. That arose a matter of days after a
3 communication by Detective Chief Inspector Fox to
4 Superintendent Gralton asking about the status of the
5 investigation and whether or not he was permitted to have
6 further access, was it not?
7 A. Sorry, he was permitted to have?
8
9 Q. Further access to --
10 A. I can't remember. I think that was probably March,
11 there was a conversation, as I understand, with
12 Superintendent Gralton.
13
14 Q. There was an email?
15 A. I'm not aware of that, I don't believe.
16
17 Q. I see.
18 A. If there was, I don't recall it. If I see the
19 document, I can talk to it.
20
21 Q. Thank you, detective sergeant. The document to which
22 you were referred at tab 123 in the evidence that
23 Ms Lonergan led from you was, as I understand your
24 evidence, and please correct me if I am wrong, a
25 transcription of a comment made by DCI Fox during the
26 course of that conversation while you were in the car
27 listening; is that right?
28 A. I was part of that conversation, yes. I was listening
29 also.
30
31 Q. Did you transcribe anything else beyond that
32 conversation that you recorded?
33 A. No, no.
34
35 Q. As far as understand it, that's an accurate recording
36 of what you heard?
37 A. 100 per cent, yes.
38
39 Q. Do you understand that what you give evidence about
40 there could easily be characterised as interpretation of a
41 type to which you earlier eschewed in your evidence?
42 A. That is exactly what he said and I wrote it down as he
43 said it. I have absolutely no question in my mind that
44 that's 100 per cent what he said.
45
46 Q. But I'm not asking you that question. What I'm asking
47 you about is whether or not your approach to what it means

1 could indeed be the sort of interpretation that you purport
2 to eschew?
3 A. I don't understand what you're asking, sorry.
4
5 Q. Have a look at tab 123 in volume 3 of the bundle.
6 Take a moment or two to look at it and read it and absorb
7 its context and meaning. This is recorded as your
8 travelling in the car. You were passenger presumably, not
9 the driver?
10 A. Yes.
11
12 Q. Do you see:
13
14 *"No I've got nothing more. I didn't do an*
15 *interview with CLARKE. I only had an off*
16 *the record chat with him that wasn't*
17 *recorded."*
18
19 That's what you've written?
20 A. Yes.
21
22 Q. Do you accept the context of that is he's got nothing
23 more about Clarke, not that he's got nothing more, full
24 stop?
25 A. No.
26
27 Q. It must be so, surely?
28 A. No.
29
30 Q. This is one sentence spoken without pause.
31 A. The thing was the question was --
32
33 Q. No, no, just answer the question?
34 A. I'm trying to, if you'll let me answer the question.
35 He was asked by --
36
37 Q. No, please, detective?
38 A. He was asked by Detective Inspector Parker if he had
39 anything further, to which he said "No, I've got nothing
40 more" and the rest of it.
41
42 Q. Would you attend to my question, sergeant. This is
43 recorded as one undivided answer to a question, is it not?
44 A. Yes.
45
46 Q. There's no pause, there's no full stop:
47

1 *"No I've got nothing more. I didn't do an*
2 *interview with CLARKE. I only had an off*
3 *the record chat with him that wasn't*
4 *recorded."*

5
6 In one sentence, was it?

7 A. Two, not one; "that wasn't recorded", correct.

8
9 Q. Said in one undivided sentence without pause?

10 A. Yes.

11
12 MS LONERGAN: Three sentences, Mr Cohen.

13
14 MR COHEN: Q. One undivided phrase without pause; is
15 that right?

16 A. Yes.

17
18 Q. Let me put it to you, detective sergeant, you're
19 misconstruing what the meaning of that sentence is, aren't
20 you?

21 A. No.

22
23 Q. And the meaning was that he had nothing more about
24 Clarke?

25 A. No.

26
27 Q. If there's nothing else than your approach to this and
28 your construction, surely you would have recorded Detective
29 Chief Inspector Parker's question, wouldn't you?

30 A. Well, I did.

31
32 Q. Did you?

33 A. Yes.

34
35 Q. Where?

36 A. In the investigator's note on the same day, as
37 I believe, yes.

38
39 Q. No, I mean at the time?

40 A. It's still contemporaneous.

41
42 Q. You indicated you wrote this down to be sure about it,
43 didn't you?

44 A. Yes, I did.

45
46 Q. Wouldn't it have been appropriate at the same time to
47 write down the question as well?

1 A. I needed to hear exactly what - I wrote down exactly
2 what he said as he said it. The other was just from my
3 recollection and I did an investigator's note on the same
4 day, as I recalled it.

5

6 Q. So you were poised ready to write down everything that
7 fell from Detective Chief Inspector Fox's mouth via the
8 speakerphone in the car?

9 A. Poised ready to write down anything that was relevant.
10 That's what I did.

11

12 Q. Doesn't that mean the question from Detective Chief
13 Inspector Parker was also relevant?

14 A. That's why I recorded it in the investigator's note.

15

16 Q. Why didn't you record it at the time?

17 A. I recorded it in the IN.

18

19 Q. Why didn't you record at the time?

20 A. I didn't need to record everything. That's an
21 aide-memoire for me and I used it as an aide-memoire for
22 the investigator's note. I don't need to do anything more.
23 I did what was required and I did that.

24

25 Q. It is good enough to rely on your memory unaided as to
26 the question, but you had to write down everything that
27 Detective Chief Inspector Fox said, did you?

28 A. It was good enough for me to rely on for that
29 investigator's note, 100 per cent, yes.

30

31 Q. Isn't that a one-sided, lopsided way of approaching
32 this?

33 A. No.

34

35 MR COHEN: I notice the time, Commissioner. Are we still
36 sitting to according to the --

37

38 THE COMMISSIONER: Yes. As you've raised it, I think it
39 was proposed that we may sit on until 4.30 this afternoon
40 unless there are any vehement objections. Perhaps anyone
41 who has such an objection can raise it with me when we
42 resume. 20 minutes, Mr Cohen.

43

44 MR COHEN: Thank you very much, Commissioner.

45

46 **SHORT ADJOURNMENT**

47

1 MR COHEN: Q. Just before the adjournment, earlier I put
2 some questions to you about the conversation in February of
3 2012 and I understand that we have a point of difference
4 about the gist about it, but the conversation, however it
5 arose, was about [BI], was it not, and seeking access to
6 [BI] by way of getting his telephone number; is that right?
7 A. He provided a number for [BI], yes.

8
9 Q. And did you ring it?

10
11 MS LONERGAN: I object, Commissioner. For reasons that
12 we've been over previously, questions that go to who was
13 interviewed in the content of the Lantle investigation are
14 not necessary to further examine for the purposes of your
15 inquiry, Commissioner, and also ought not be gone to.

16
17 THE COMMISSIONER: Yes, thank you Ms Lonergan. Do you
18 understand, Mr Cohen?

19
20 MR COHEN: I certainly do. I'm not seeking to descend
21 into any of the detail, and I certainly understand the
22 sensitivity, I can assure you of that, Commissioner.
23 I just want to understand, at threshold, one matter. I'll
24 put it this way.

25
26 Q. Allow me to put this question and can I say this to
27 you, Detective Sergeant Little, I'm going to phrase a
28 question for the Commissioner to consider, please don't
29 respond it. Allow the Commissioner to consider it before
30 it is answered, if it is answered at all. The question I
31 want to put is: was any opportunity taken to make contact
32 with [BI] after receipt of information of how to make
33 contact?

34
35 THE COMMISSIONER: There's no objection to just that
36 question and answer being given?

37
38 MS LONERGAN: No, Commissioner.

39
40 THE COMMISSIONER: Thank you. It can be answered.

41
42 MR COHEN: Q. Do you have the question?

43 A. Did I contact [BI]?

44
45 Q. Yes.

46 A. Yes.

1 Q. You did?

2 A. Yes.

3

4 Q. And that happened around about February of 2012, did
5 it?

6

7 MS LONERGAN: Commissioner, may I raise an objection that
8 any further questions would be inappropriate. The question
9 that has already been asked as to whether contact was made
10 using the information provided by Detective Chief Inspector
11 Fox appears to be the limit of usefulness to the, matters
12 unique to this review, Commissioner.

13

14 THE COMMISSIONER: Yes, thank you, Ms Lonergan.

15

16 Mr Cohen. We have that the witness made use of the
17 information provided by Detective Chief Inspector Fox.
18 Isn't that sufficient for your purposes?

19

20 MR COHEN: I just wanted to fix it as to a time. Again,
21 I don't want to descend into details. I want to understand
22 when that occurred. Unless you, Commissioner are prepared
23 to draw inferences about when that happened.

24

25 THE COMMISSIONER: I would infer that it must have
26 occurred after the telephone call was provided from the
27 answer that has been given, but --

28

29 MR COHEN: I'm content with that.

30

31 THE COMMISSIONER: Thank you, Mr Cohen.

32

33 MR COHEN: If you're satisfied, I'm content with that.

34

35 THE COMMISSIONER: Q. Would that be an inaccurate
36 inference, Detective Sergeant Little?

37 A. No, ma'am.

38

39 THE COMMISSIONER: Thank you, Mr Cohen.

40

41 MR COHEN: Given the very evident and stringent
42 constraints to which I'm entirely alive, Commissioner,
43 I have no further questions.

44

45 THE COMMISSIONER: Thank you Mr Cohen. Mr Terracini?

46

47 MR TERRACINI: I have no questions, Commissioner.

1
2 THE COMMISSIONER: I expect that Mr Gyles, Ms Needham and
3 Mr Skinner have no questions.
4
5 MR SKINNER: May I just say this, Commissioner. I
6 understand that Detective Sergeant Little is coming back
7 for the second term of reference.
8
9 THE COMMISSIONER: Yes.
10
11 MS LONERGAN: That's right.
12
13 MR SKINNER: I'll leave my questioning until then.
14
15 THE COMMISSIONER: Thank you, Mr Skinner. Yes, Mr Saidi?
16
17 MR SAIDI: Commissioner, Ms Lonergan had placed in front
18 of the witness a coloured document. That hasn't been
19 tendered. Could I ask counsel assisting if it is intended
20 to be tendered and could I make a request that it be
21 tendered.
22
23 THE COMMISSIONER: The pseudonym list, Mr Saidi? Is that
24 what you mean?
25
26 MR SAIDI: That's the response that was provided to the
27 list of questions, the answer and the comments made by the
28 witness.
29
30 THE COMMISSIONER: Thank you.
31
32 MS LONERGAN: Commissioner, that's in fact an annexure to
33 Detective Sergeant Little's statement. It was simply
34 provided in that form --
35
36 THE COMMISSIONER: Exhibit 25.
37
38 MS LONERGAN: -- to assist the witness in delineating what
39 parts were in red type, which were Detective Chief
40 Inspector Fox's replies and what parts were in blue type
41 which were his questions. There's nothing additional or
42 different in that colour copy that was provided to the
43 witness that is any different from the copy that's annexed
44 to the witness's statement.
45
46 THE COMMISSIONER: Except the colours.
47

1 MS LONERGAN: Except the colours.

2

3 THE COMMISSIONER: Thank you, Ms Lonergan.

4

5 Mr Saidi, does that satisfy you or would you like to
6 have a coloured copy?

7

8 MR SAIDI: I was going to suggest a coloured copy
9 formally. I don't have the coloured copy. I don't know
10 whether anyone else has had access to the coloured copy,
11 but the coloured copy is certainly much more easily able to
12 be understood, managed, et cetera.

13

14 THE COMMISSIONER: No doubt it can be reproduced perhaps
15 not immediately, but --

16

17 MS LONERGAN: Yes, Commissioner. That's a good suggestion
18 by Mr Saidi. Because of the limited access to colour
19 Copying here, we will pursue that course and parties can be
20 provided with a copy of that. The document will need to be
21 carefully redacted for reasons I've already outlined.

22

23 There had been a request by the press to have exhibit
24 25 released to them. If all present at the Bar table could
25 consider whether they have any objections to the redacted
26 version of that document being provided, could they let me
27 know by 2pm. I will tender the coloured copy of the email
28 exchange just so that it will be readily identified as
29 exhibit 26.

30

31 THE COMMISSIONER: Exhibit 26 will be the coloured copy of
32 the email exchange.

33

34 **EXHIBIT #26 COLOURED COPY OF EMAIL EXCHANGE**

35

36 THE COMMISSIONER: Mr Saidi?

37

38 **<EXAMINATION BY MR SAIDI:**

39

40 MR SAIDI: Q. Detective, I think with all due respect to
41 you, you have been somewhat humble in terms of your
42 experience and past experience as an investigator. I would
43 like to draw that out a bit more from you if I can. You're
44 aware, as I approach this, that some suggestion was made on
45 the part of the Detective Chief Inspector Fox about you
46 having had limited experience when you came into Strike
47 Force Lantle?

1 A. I am.
2
3 Q. In terms of your experience, you've been involved in a
4 number of very substantial investigations, have you not?
5 A. I have.
6
7 Q. Both in Australia and overseas?
8 A. Correct.
9
10 Q. Could you tell the Commission the nature and extent of
11 your involvement in these investigations in the overseas
12 context?
13 A. I guess, to start with, in relation to overseas,
14 I investigated human rights atrocities in East Timor as a
15 result of war, as a result of pro-independence actions.
16 I investigated a number of massacres while I was there, the
17 massacre of human innocent civilians.
18
19 Q. Coming back to Australia, in terms of your experience
20 in investigations, did you have experience prior to taking
21 up Strike Force Lantle in terms of sexual assault matters?
22 A. Yes.
23
24 Q. Can you give us some idea of that experience?
25 A. Yes. I actually ran, for a period of time, from 12 to
26 18 months, a criminal investigation and quasi sexual
27 assault unit as a result of the volume that we had in the
28 Barrier Local Area Command. I think there's some
29 misconception in relation to the work in general duties in
30 fact performed prior to me ever assuming a role in a
31 plainclothes position or a criminal investigative position.
32 I conducted a two-year investigation in relation to a
33 multitude of sexual assaults during the early 1990s, which
34 I actually received a commendation for. As a result of the
35 sexual assault investigations, I managed a lot of those as
36 well in Barrier Local Area Command. And I think that
37 pretty much answers that part of the question, sir.
38
39 Q. In terms of your involvement in sexual abuse
40 allegations - and I can assure you I won't make the same
41 mistake I made when asking Mr Jacob questions about his
42 sexual experience. I will qualify yours as to your
43 investigative experience - was it in terms of a managerial
44 role in terms of investigations?
45 A. In relation to?
46
47 Q. An advisory and a managerial role?

1 A. Yes.
2
3 Q. You were responsible for supervising other police
4 officers when carrying out those sexual abuse
5 investigations?
6 A. Correct.
7
8 Q. Coming back to your overseas experience, was that in a
9 supervisory and managerial role as well?
10 A. It was actually a hands-on and supervisory role, yes.
11
12 Q. In terms of any suggestion made, you're aware of these
13 suggestions by Detective Chief Inspector Fox, that you had
14 limited experience coming into Strike Force Lantle; what do
15 you say about that?
16 A. I was disappointed by the comment.
17
18 Q. Detective Chief Inspector Fox has indicated that you
19 worked in uniform in the same local area command at a point
20 of time when he was working there?
21 A. That's true.
22
23 Q. You worked there for a period of some months,
24 according to your evidence today?
25 A. Correct.
26
27 Q. Did you work directly with him upon any investigation
28 of any kind?
29 A. No, I did not.
30
31 Q. At any stage did he approach you and ask you for
32 information relating to what your experience was in terms
33 of investigating serious crime?
34 A. Never.
35
36 Q. Prior to your completion of Strike Force Lantle, did
37 Detective Chief Inspector Fox, on any occasion, approach
38 you and ask you about your experience in terms of
39 conducting investigations?
40 A. At no stage.
41
42 Q. Or as an investigative officer?
43 A. At no stage.
44
45 Q. I want to ask you about a specific matter and it
46 relates to the term "Catholic mafia". Had you heard that
47 term whilst conducting Strike Force Lantle, from your

1 perspective?
2 A. Not until this Commission.
3
4 Q. Was there any indication that you can tell the
5 Commissioner about whilst you were working on Strike Force
6 Lantle about any steps taken by any person, whether police
7 officer or otherwise, to discourage you from carrying out
8 your functions?
9 A. Absolutely none.
10
11 Q. In terms of the resources of the strike force, to what
12 extent were you satisfied as to it being resourced?
13 A. Satisfied.
14
15 Q. In terms of the assistance provided by you or to you
16 by other police officers, what can you tell the
17 Commissioner about that?
18 A. It was provided when it was requested.
19
20 Q. Let me ask you this question - you may find it
21 offensive, but I need to ask it - it has been suggested
22 that Strike Force Lantle was set up to fail. What do you
23 say about that?
24 A. I was absolutely mortified by those comments.
25
26 Q. Was there any indication of any kind that you can
27 point to the Commissioner which would lead one to suspect
28 that Strike Force Lantle was set up to fail?
29
30 MR COHEN: I object. It is a question for you,
31 Commissioner.
32
33 MR SAIDI: It is a question for his knowledge.
34
35 THE COMMISSIONER: I will allow it.
36
37 THE WITNESS: Absolutely to the contrary.
38
39 MR SAIDI: Q. Why do you say "to the contrary"?
40 A. Because if it was set up to be a sham and set up to
41 fail, I wouldn't have had the two things that Detective
42 Chief Inspector Fox didn't have, and that was the support
43 of my superiors - because I wasn't operating in secret, and
44 I was being honest and I was recording things - and a plan.
45
46 MR COHEN: I object.
47

1 THE COMMISSIONER: What's your objection?

2

3 MR COHEN: There are a whole series of value judgments and
4 opinions being wrapped up in the purported answer to that
5 question which, in my respectful submission, can't assist
6 you. Those value judgments are a matter for you,
7 Commissioner - no-one else. You're the determiner; you are
8 the evaluator and determiner of such questions, no-one else
9 in this Commission can do that. It is a matter for you to
10 report. You'll have assistance from counsel assisting,
11 you'll have submissions from various counsel, but you
12 decide those questions - no-one else.

13

14 If I may respectfully submit, it is no different from
15 the notion, as is often the case in civil law matters,
16 where it is asserted that there can be probative evidence
17 provided by witnesses about what other practitioners do,
18 that, routinely, judges have decided that's a matter for
19 them, not for the impressions of others.

20

21 MS LONERGAN: Commissioner, could I be heard on this?

22

23 THE COMMISSIONER: Yes.

24

25 MS LONERGAN: It is a matter for you to weigh the evidence
26 which includes opinions of, in this case, a number of
27 experienced officers about matters that they have observed
28 or done. It is completely appropriate that the evidence be
29 received and it can be weighed accordingly at a later time.
30 It is not a question of ultimate issue and therefore a
31 witness can't give evidence about the ultimate issue,
32 that's not relevant to the matters or the approach we need
33 to take to examining these matters before you.

34

35 THE COMMISSIONER: Yes. I regard it as Detective Sergeant
36 Little's opinion, Mr Cohen, and I don't think the answer
37 was in any way objectionable.

38

39 MR COHEN: If the court pleases?

40

41 MR SAIDI: Q could you start your answer again rather than
42 finish it half or part of the way through?

43

44 A. Sure. As I said, I believe it was to the contrary in
45 relation to it being set up to fail. I had the two things
46 that DCI Fox didn't have, which was the support of my
47 superiors, and because I wasn't operating in secret,
I recorded things. I didn't operate on speculation or any

1 manipulation of the truth.

2

3 MR COHEN: I object. These are the very evaluative
4 judgments that only you can make, Commissioner. This is a
5 platform to attack Detective Chief Inspector Fox, not an
6 evaluation of evidence, in my respectful submission.

7

8 MS LONERGAN: Commissioner, may I be heard on that?

9

10 THE COMMISSIONER: Yes.

11

12 MS LONERGAN: There has been evidence offered by Detective
13 Chief Inspector Fox that this gentleman conducted an
14 investigation that was a sham and was set up to fail. It
15 is appropriate that this witness be given an opportunity to
16 provide his views and his perceptions of what he was doing
17 in this way. The question is appropriate, in my
18 submission, and it should be allowed to be answered.

19

20 MR COHEN: Indeed, but my submission is that there is no
21 warrant for the adjectival qualifications that are being
22 appended to this evidence.

23

24 THE COMMISSIONER: You were particularly concerned about
25 the expression "manipulation of the truth", I expect.

26

27 MR COHEN: Yes, and "in secret".

28

29 MS LONERGAN: It is hard to see a more negative
30 implication to a police officer's investigation than
31 claiming in the public domain that it is a sham and set up
32 to fail. In my respectful submission, this officer ought
33 to have the opportunity to provide a response.

34

35 THE COMMISSIONER: Thank you Ms Lonergan. I agree.

36

37 Q. Would you continue with your answer, detective.

38 A. Thank you, Madam Commissioner. The comments in
39 relation to manipulation of the truth is as a result of
40 documents that have been tendered in relation to the report
41 on 25 November 2010 which had errors through it, along with
42 even the public portrayal that Detective Chief Inspector
43 Fox had conducted interviews with Bishop Leo Clarke, which
44 is completely untrue, along with a brief of evidence, which
45 was supposed to have existed for Bishop Malone, which is
46 completely untrue again.

47

1 As for the brief of evidence being set up to be a
2 sham, nothing could be further from the truth. In fact, my
3 superiors have been completely supportive throughout this.
4 I cannot speak highly enough of them. If it had been set
5 up as a sham, it would have been a case of, "Detective
6 Sergeant Little, you have three months to complete this.
7 That's it. See how you go." At no stage was any pressure
8 put on me to terminate this investigation. In fact, to the
9 contrary, I was encouraged, and when I needed to step
10 outside the bounds of the terms of reference, for example,
11 where I needed to make further investigations and conduct
12 those inquiries, I was encouraged to do so. I was never
13 knocked back and they were very flexible about it.

14
15 MR SAIDI: Q. The Commission knows there was assistance
16 provided by the State Crime Command through Detective
17 Inspector Paul Jacob?

18 A. Correct.

19
20 Q. And you called on that assistance. That appears to be
21 in the evidence?

22 A. Absolutely.

23
24 Q. Are you able to say whether or not at any stage, in
25 terms of the calling upon or calling for that assistance,
26 there was any lack of resourcing flagged to be provided or
27 any failure to meet the request for assistance?

28 A. No, no issue with that at all.

29
30 Q. In terms of the assistance provided by Detective
31 Inspector Jacob, what can you say about the nature and
32 quality of the assistance provided?

33 A. Detective Inspector Jacob has been an absolute rock
34 throughout this and I certainly rely upon his background
35 and his experience to that effect. He has always made
36 himself available and continues to do so.

37
38 Q. It has been suggested by Detective Chief Inspector
39 Fox - and I'm going to be particular in terms of what I put
40 to you now - that he made an offer to sit down with the
41 investigators to go through the material he had been
42 directed to hand over and that was never followed up. Do
43 you agree or disagree with that comment?

44 A. That I never --

45
46 Q. Sorry, it was never followed up by Detective Little or
47 Inspector Parker?

1 A. That I didn't sit down with him?

2

3 Q. Yes. I'll quote it again:

4

5 *My offer to sit down with the investigators*
6 *to go through the material I had been*
7 *directed to hand over at the warrant*
8 *meeting in December 2010 was never followed*
9 *up on by Detective Little or Inspector*
10 *Parker.*

11

12 A. Actually, we had never precluded that. However,
13 DCI Fox went off on sick report himself anyway and
14 precluded that. We had not ruled that out. He precluded
15 that himself. Having said that, on the basis of some
16 errors, and I would say untruths, in his initial report,
17 along with the esoteric email responses that he sent,
18 I would have certainly been guarded in relation to any of
19 that. It is not a matter of just sitting down and having a
20 cosy chat about the things, as he puts it, in the back of
21 his brain or in the back of his head, or in his head.
22 These are matters that happened some eight to ten years
23 ago, so they need to be properly recorded and they were
24 properly recorded the way we did it. Certainly, by the
25 mere fact that he's written a saddle of lies at this point
26 was a concern for me. As far as I'm concerned, I've had
27 those things documented with his proper answers and I've
28 responded to those.

29

30 Q. They're strong statements. Let me ask you about the
31 reference to the "saddle of lies" that he's written upon.
32 There's a report of 25 November 2010. You've already made
33 mention of that. Did that report contain inaccuracies, to
34 your belief?

35 A. Yes.

36

37 Q. When did you first form the belief that the
38 inaccuracies were contained within that report?

39 A. Within the first six months of going through all the
40 documentation and making those inquiries.

41

42 Q. The inaccuracies that you believed existed, were they
43 significant or otherwise?

44 A. Significant.

45

46 Q. Did that have any effect on you about whether or not
47 you should call for assistance from Detective Chief

1 Inspector Fox?
2 A. It was a credibility issue.
3
4 Q. In coming to that judgment on your own part, did you
5 arrive at that judgment by yourself or did anyone else
6 assist you in forming that judgment at that time?
7 A. Nobody influenced me on that judgment. That was my
8 judgment alone.
9
10 Q. In a general sense, are you able to say whether or not
11 you had a belief as to whether you could rely upon the
12 matters contained in the report of 25 November 2010 that
13 was prepared by Detective Chief Inspector Fox?
14 A. With caution.
15
16 Q. I want to put another proposition to you. Detective
17 Chief Inspector Fox maintains that he was "never asked to
18 provide a statement of my conversation with Bishop Leo
19 Clarke", when he lied about his knowledge of further
20 victims of Father McAlinden?
21 A. By his own email, Detective Chief Inspector Fox
22 forwarded his attachment and referred Detective Inspector
23 Parker's and my attention, or drew our attention, from
24 memory, to the fourth paragraph on page 2 of that report,
25 indicating that that's the only dealings he had with Bishop
26 Leo Clarke which, again, his answers are inconsistent with
27 the email to [Detective X], and I use that pseudonym, on
28 16 September 2010, during which he said in that email he
29 interviewed Bishop Leo Clarke - again another inconsistency
30 in what he had to say.
31
32 Q. Did he, for his part, ever indicate to you that he had
33 information at his disposal that was worthy of being
34 reduced to a police statement for the purposes of Strike
35 Force Lantle in relation to Bishop Clarke?
36 A. No.
37
38 Q. I want to take you to an email. I think you've got
39 the tabs in front of you, tab 124. Do you have that there
40 in front of you?
41 A. Yes, I do.
42
43 Q. That's an email of 5 April 2012.
44 A. Yes.
45
46 Q. At 14.01 hours?
47 A. Correct.

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Q. That's at page 663, for the record. If you go down to the third last paragraph from the bottom, the paragraph commencing, "I don't have any more documents off the top of my head"?

A. And it continues:

I was directed by Max to surrender all, which I did.

Q. Right. That's a representation that was made to him or rather, by him to you, on that date, that all documents had previously been surrendered; is that so?

A. Yes, which supports my assertion to Mr Cohen earlier in relation to the investigator's note on 2 December 2010.

Q. I'll bring you to that investigator's note. Would you turn to tab 125. That investigator's note was created on 5 April 2012. Do you see that?

A. Yes.

Q. That appears to be on the same date as the email I referred you to?

A. Correct.

Q. The investigator's note you prepared on that date sets out part of that conversation which was had with Detective Chief Inspector Fox; is that correct?

A. Correct.

Q. It records in the investigator's note the fact that a conversation took place on a loudspeaker?

A. Correct.

Q. During which Parker inquired whether Fox had any further information or evidence relating to the investigation?

A. Yes, and I emphasise the word "Any".

Q. I was going to ask you about that. Why did you emphasise the word "Any", that is by capitalising that word?

A. Because, by the very context of this investigator's note, I wanted to make it clear to any other reader, should it be subject of a review, that Detective Inspector Parker made it very, very clear to him we were chasing any further information so that we could properly and thoroughly

1 investigate anything that he may have which may be of
2 relevance to this investigation.

3

4 MR SAIDI: Given the nature of the cross-examination by
5 Mr Cohen in relation to that conversation and that note,
6 I know it is contained at tab 124, I was going to ask it be
7 recorded or received as a separate exhibit.

8

9 MS LONERGAN: Commissioner, I had a note to send to
10 Mr Saidi to the effect it would be appropriate, given the
11 examination, that the investigator's note behind tab 125 be
12 tendered now as a separate exhibit.

13

14 THE COMMISSIONER: Yes, that investigator's note dated 5
15 April 2012 and paginated as 666 will be admitted and marked
16 exhibit 27.

17

18 **EXHIBIT #27 INVESTIGATOR'S NOTE DATED 5/4/2012 (TAB 124)**

19

20 MR SAIDI: Q. You were present in court when Mr Lloyd QC
21 gave his evidence in relation to his review of Strike Force
22 Lantle?

23

A. Yes.

24

25 Q. In terms of the matters raised by him, he appeared to
26 indicate that he was satisfied with the way in which the
27 investigation was carried out and that all matters had been
28 attended to?

29

A. Yes, sir.

30

31 Q. From that date until today, on the assumption you've
32 had an opportunity of reflecting upon that evidence, are
33 you satisfied as of today that all matters have been
34 attended to?

35

A. In relation to --

36

37 Q. The investigation conducted by Strike Force Lantle?

38

A. Yes.

39

40 Q. Are you satisfied as of today as to whether or not any
41 further matters are required to be attended to before final
42 advising by the DPP?

43

44 MS LONERGAN: I object. It is offending the matter that
45 has already been raised.

46

47 MR SAIDI: I'm sorry. I should exclude that matter and

1 make it the brief as delivered.

2

3 MS LONERGAN: Commissioner, it is best not to go down that
4 line, given matters that have already been raised about the
5 need to protect that private investigation.

6

7 THE COMMISSIONER: I can't admit that type of question.

8

9 MR SAIDI: I won't press that, Commissioner, and I'll take
10 on board what counsel assisting says.

11

12 Q. I want to put another allegation made by Detective
13 Chief Inspector Fox in relation to your involvement with
14 Strike Force Lantle. The suggestion was that you were only
15 working part-time for a very considerable period on Strike
16 Force Lantle. What do you say to that suggestion?

17 A. Nothing would be further from the truth. In fact, at
18 the behest of my own family, I spent a lot of time on that
19 investigation.

20

21 Q. Were there periods when you were engaged in other
22 duties whilst carrying out the investigation?

23 A. Certainly.

24

25 Q. Can you give us a background as to what other duties
26 you were carrying out and the reasons why?

27 A. Yes. I work as a detective sergeant in the largest
28 local area command in New South Wales. It is a very busy
29 office with some highly competent investigators. By the
30 very nature of that office, we are on a daily basis
31 inundated with serious crime, including and not limited to,
32 armed robberies and sexual assaults and, from time to time,
33 homicides. Such jobs like that require an
34 all-hands-on-deck approach to ensure that those - that that
35 evidence is actually captured on those live investigations.

36

37 Now, we're talking about crime scenes whereby the
38 integrity of those need to be protected and that the
39 evidence needs to be properly collected rather than lost,
40 to ensure that we look after the victims in relation to
41 those matters and ensure a high solvability rate. Some of
42 the matters that I was involved in include at least one
43 homicide, armed robberies and the malicious wounding of
44 another police officer on duty.

45

46 Q. They were, of course, then current matters that needed
47 to be urgently investigated?

1 A. They were urgently required to be investigated, yes.

2

3 Q. Whereas the matters involved with Strike Force Lantle
4 appeared to be more after historical nature?

5 A. That's correct. Equally important, but historical.

6

7 Q. That's in relation to the suggestion you only worked
8 part-time. The suggestion also was that Inspector Parker
9 was only working part-time on the Catholic Church
10 investigation what. Do you say about that?

11 A. Detective Inspector Parker is my immediate superior
12 and my commander. He has to have a helicopter view of all
13 investigations. It is not for him to hop on, hands on and
14 take statements and so forth. However, whenever
15 I requested the assistance of DI Parker, at no stage did he
16 falter or refuse or decline in any way. In fact, he went
17 out of his way to assist. Where I believed it was
18 appropriate, he actually sat in on interviews with me as a
19 result of dignity and the appropriateness of those
20 interviews with regard to the subjects that we were dealing
21 with.

22

23 Q. I'm going to put this assertion to you: Clearly it
24 was a strike force in name own for media purposes and not a
25 dedicated unit. What do you say about that assertion?

26 A. The only thing comes to mind is that that's complete
27 rubbish.

28

29 Q. Can you tell us why?

30 A. It was a dedicated strike force. It was one that
31 Detective Inspector Parker and I substantially were
32 involved in. Due to the fact it had, previously to our
33 involvement, leaked like a sieve, we decided to ensure the
34 integrity of the investigation and we kept it tight to that
35 effect. Now, when other investigators, and they have been
36 mentioned during evidence here, were available, they
37 assisted. However, given the nature of the office that
38 I've spoken about and the serious crimes that had
39 transpired, they too had competing interests. Should
40 I have required further assistance, I believe I would have
41 achieved that. However, as a result of conversations
42 between myself and Detective Inspector Parker, it was
43 decided that the integrity of this investigation was of
44 paramount importance and, as a result of that, we limited
45 the amount of people who were going to be involved on that
46 investigation.

47

1 MR SAIDI: They are my questions, Commissioner.
2
3 THE COMMISSIONER: Thank you.
4
5 MS LONERGAN: No further examination, Commissioner.
6
7 THE COMMISSIONER: Thank you for your evidence, sir. You
8 are excused.
9
10 THE WITNESS: Thank you.
11
12 <THE WITNESS WITHDREW
13
14 MR HUNT: I call Joanne McCarthy.
15
16 MR TERRACINI: There is no application under section 23
17 for this witness. If it becomes apparent to us, then I'll
18 bring your attention to it, Commissioner.
19
20 THE COMMISSIONER: Thank you, Mr Terracini. That is
21 understood.
22
23 <JOANNE McCARTHY, affirmed: [12.35pm]
24
25 <EXAMINATION BY MR HUNT:
26
27 MR HUNT: Q. Is your name Joanne McCarthy?
28 A. Yes.
29
30 Q. Ms McCarthy, have you affirmed two affidavits to
31 assist those assisting the Commissioner, one being an
32 affidavit provided before the commencement of the first
33 public hearing in relation to this term of reference?
34 A. Yes.
35
36 Q. And a more substantial one provided more recently?
37 A. Yes.
38
39 Q. Do you have copies of those affidavits in the witness
40 box with you, if you need to refer to them?
41 A. I've got the first one.
42
43 Q. Could I rely on your solicitor to hand that to you.
44 Thank you. If you just open that up, you'll see that's
45 partially redacted, but have reference to that if you want
46 to as I ask you some questions about some of its contents.
47 A. Yes.

1
2 Q. I wanted to start by asking you some questions about
3 your professional experience. You started work at the
4 Gosford Star newspaper, which was a free weekly newspaper,
5 in February 1980?
6 A. Yes.
7
8 Q. And you became an employee of the Central Coast
9 Express Advocate in 1987 --
10 A. Yes.
11
12 Q. -- when that paper merged with the other one?
13 A. Yes.
14
15 Q. You moved to the Newcastle Herald in August 2002?
16 A. Yes.
17
18 Q. Where did you first work geographically when you
19 commenced to work at the Newcastle Herald?
20 A. I've always worked on the Central Coast. They had an
21 office Erina on the Central Coast. I've never worked in
22 the Newcastle Herald office in Goulburn Street.
23
24 Q. Did you complete an arts degree at Newcastle
25 University in 2004 during the time that you were working
26 with the Express Advocate?
27 A. And the Newcastle Herald, yes.
28
29 Q. In March of this year, were you named the winner of
30 the 2012 Graham Perkin Award for investigative journalism?
31 A. Yes.
32
33 Q. What was the work that you were undertaking that gave
34 rise to that award?
35 A. It was basically 2012 work on the Catholic Church and
36 the royal commission - the campaign for a royal commission.
37
38 Q. I want to start by asking you some questions about
39 your general practice since you've been a journalist with
40 the Newcastle Herald in relation to contact with police
41 generally and then I'm going to ask you some questions
42 about your earliest contact with DCI Fox. Do you
43 understand?
44 A. Yes.
45
46 Q. Would you address the Commissioner in general the
47 circumstances in which you would be in contact with police

1 officers and practices that you take to that sort of
2 contact?

3 A. I had very little contact with police prior to this
4 church stuff starting. I've never been a police roundsman,
5 so I might have had the occasional phone call to a police
6 officer, none come to mind, but I worked more in local
7 government, government, courts. By the time matters reach
8 courts, police and witnesses, I'm not talking to them,
9 so --

10

11 Q. All right. I want to come generally to your work
12 investigating historical sexual abuse matters and,
13 particularly, relating to the Catholic Church.

14 A. Yes.

15

16 Q. Are you able to indicate, first of all, what sort of
17 contact and the kinds of interactions that you had in a
18 general sense with Detective Sergeant Kristi Faber in
19 respect to Strike Force Georgiana?

20 A. When it was first set up, very little. I was aware
21 that she was involved with it, but it wasn't until probably
22 early 2010 that I had any real talking contact with her.

23

24 Q. Then just broadly, what was the nature of that
25 contact? Why would you be in touch with her or why would
26 she be in touch with you?

27 A. It wasn't that we were in touch. It was simply - can
28 I name the priest, because he's on fresh charges?

29

30 Q. No. Just have a look at the pseudonym list and
31 I think you're talking somebody with the name [NP], but --

32 A. No, it wasn't that one. It was another one.

33

34 Q. He does have a pseudonym, but I'm --

35 A. It's somewhere in there.

36

37 Q. I know who you're talking about and he has been
38 allocated a pseudonym. Perhaps you could write the
39 person's name on a piece of paper, if you would, for the
40 moment. Could that be handed up to the Commissioner and
41 we'll insert the pseudonym when it comes to hand. I have
42 an idea it might be NP3, Commissioner.

43 A. (Witness does as requested)

44

45 MR HUNT: Could that be handed up to the Commissioner and
46 we'll insert the pseudonym when it comes to hand. I have
47 an idea it might be [NP3], Commissioner.

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THE WITNESS: That person - I had contact with Detective Faber when that person was before the court down in Sydney and there had been guilty pleas and we had discussions. Obviously by that stage she was aware - Detective Faber was aware of some of the work that I'd done and so we just had a chat in terms of what to do with this particular matter.

MR HUNT: Just bear with me. Could I just have a moment with those who instruct me, Commissioner?

THE COMMISSIONER: Yes. I will hand down the name of the person that the witness is speaking about.

MR HUNT: Thank you, Commissioner. It is proposed that the person that the witness has referred to be [NP3].

Q. That just hasn't made its way on to the pseudonym list, I'm sorry, and I'm grateful you're being careful about that, Ms McCarthy.

A. Yes, there's a few of them.

Q. You might see the redacted copy has pseudonyms in there so you can safely refer to those.

A. Yes.

Q. Would you go to, in a general sense rather than interactions particular to this matter that I'll come to, any general kind of contacts that you had with Detective Shaun McLeod, the nature of those?

A. With McLeod, it would have been the same. My memory is that he was at that court at the same - I can sort of picture Faber and McLeod together. I don't even remember having a conversation with him at that point. We had spoken on the phone, but it was a couple of years earlier.

Q. Is there a general reason in the normal course of your duty that you would ring a police officer?

A. Not really. Not - as I said, apart from the Strike Force Georgiana, and this - between 2010 and now, prior to that, it just didn't come up that I would have much contact with police.

Q. Are you able to indicate the first circumstance in which you can determine that you had contact with Peter Fox?

A. That was in 2007, September, and it was in - after the

1 name McAlinden came up first.

2

3 Q. And how did it come up? Was DCI Fox in touch with you
4 or you were in touch with him back in 2007?

5 A. I was in touch with him.

6

7 Q. Can you tell the Commissioner how you came to be in
8 touch with him, that is, why once the name McAlinden came
9 up, you elected to be in touch with Fox?

10 A. Because where he was based - I think it was because us
11 I was aware - you see, at this stage I didn't know police
12 who might have been investigating these things apart from
13 Georgiana. I contacted - so this is 2007. Actually,
14 Georgiana wasn't even begun.

15

16 I knew that he had been involved with the prosecution
17 of Jim Fletcher, so, in the absence of knowing police to
18 ring, I rang him, and he just said that he'd had some
19 contact with McAlinden. He provided the McAlinden
20 investigation, so he provided me with useful information to
21 let me know there was legs in the McAlinden matter. "Legs"
22 being, sorry, that from a police point of view, they were
23 aware of McAlinden or had been aware of him.

24

25 Q. Was your purpose at that stage to try and work out
26 whether the police were actively investigating McAlinden or
27 to find out information from police holdings or just trying
28 to --

29 A. At that stage, it was more - I was ringing a lot of
30 people at that point because McAlinden's name came up out
31 of the blue when somebody put that name to me and it came
32 immediately after the Ryan/Cotter article. So it was just
33 basically, "Well, if you're looking at longstanding priest
34 matters, look at McAlinden." So, yes, that's how it came
35 up.

36

37 Q. Are you able to tell the Commissioner how many
38 contacts or phone calls or emails you would have had with
39 DCI Fox back in 2007?

40 A. Oh, it was - it was only a couple. He told me that
41 yes, there had been a warrant issued for McAlinden's
42 arrest. He told me that - he was the one who told me that
43 the complaint related to offences in the early 1950s. That
44 was very useful, because I'd also been in contact with
45 Broken Rites, so it just established that the police were
46 aware that McAlinden - some of the alleged offences were,
47 you know, quite early.

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Q. Did DCI Fox, at that stage when you were in contact with him in 2007, give you the impression that he was actively investigating McAlinden at that stage?

A. No - well, no, no.

Q. Is what you've had to say to the Commissioner on that topic the extent effectively of your contact with Fox at that time?

A. Yes. It was useful but it was limited to, you know, "Yes, we're aware of McAlinden, yes, this formal sort of action was attempted to have been taken."

Q. At that point, was there anything out of the ordinary in terms of your contact with DCI Fox or his contact with you as opposed to the other kinds of contact you'd had with police professionally?

A. No.

Q. Are you able to isolate when it was next? You might want to look at paragraph 5 of your second affidavit, your more recent affidavit. Are you able to ascertain when it was you next had contact with Peter Fox?

A. Yes. That was May 30, 2008.

Q. What was the context of that, looking carefully at the pseudonyms there?

A. Yes. Maitland-Newcastle diocese had issued a media statement. It was in relation to - it named two priests, an action that the diocese had taken. By May 2008, I was sort of the Newcastle Herald's go-to person for these Catholic things, so the statement was sent to me.

Q. Did the media release relate to one priest [NP]?

A. Yes.

Q. Yes.

A. And it mentioned the second priest.

Q. That's [NP4]?

A. Yes.

MR HUNT: Can I indicate to those at the Bar table there's a slight lag in terms of the pseudonyms. If people want to know, during the course of the examination or immediately afterwards, the real identities of people attached to pseudonyms the witness or I mention, I'm happy to give that

1 information.

2

3 Q. What led you to contact DCI Fox when you saw that
4 media release?

5 A. Simply that he was another police officer. With
6 something like that, you just ring anyone you can think of
7 to see what information you could get. At that stage, my
8 knowledge of [NP] was not in relation to child sexual abuse
9 things. It was in relation to other matters that he'd been
10 involved with. Because the diocese's statement had just
11 said, "Professional conduct requiring independent
12 investigation", as a journalist we had to be careful about
13 the imputation that somebody might have been stood down,
14 particularly if you're naming them, and people might think
15 that it is child sexual abuse. I was trying to establish
16 why is this man being stood down and whether the police
17 were involved with it. The diocese wasn't saying. So
18 I just rang - as I said, I can't remember, until this was
19 raised in the Commission, I didn't even have any memory of
20 this happening. It was only when I checked back with the
21 archive and, yes, that's what it's all about.

22

23 Q. In terms of the methodology of arriving at the
24 material you rely on in your affidavits to assist your oral
25 evidence today, is some of the material from your memory
26 and other material based on you key-word searching articles
27 that you'd written and the like to see what material you
28 relevantly once knew; is that right?

29 A. Yes. I didn't remember even making that call, but
30 when I saw the date, looked up FDC and the article, I just
31 said, "Oh, that's what that's about." And I did remember
32 Fox just ruling out anything to do with [NP].

33

34 Q. Effectively, you were asking Fox whether he was
35 investigating either [NP] or [NP4]?

36 A. No, not [NP4] because I knew Georgiana was looking at
37 [NP4].

38

39 Q. Did Fox tell you he wasn't investigating [NP]?

40 A. Yes. That was my memory.

41

42 Q. Did he, either on this occasion or on any occasion,
43 give you material that related to Strike Force Georgiana
44 investigations?

45 A. No.

46

47 Q. After he told you that he wasn't investigating [NP],

1 did he either direct you - "he" being DCI Fox - somewhere
2 else or tell you who was investigating [NP]?
3 A. He might have. As I said, all I can remember is, it
4 was a quick phone call. I didn't know him, so - in fact,
5 I would even sort of almost suggest it was like a brush-off
6 thing, you know. That's my memory of it, so --
7
8 Q. Can you recall whether he confirmed that there was
9 some kind of police investigation in relation to [NP]?
10 A. No. No.
11
12 Q. Does that mean you can't remember?
13 A. I can't remember and really, in the way - in the form
14 that it appeared in the article, obviously I haven't got
15 anything much from anyone, because I think I said the
16 "Herald understands" or something that police have - and
17 I think I was relying on what a person from the diocese had
18 told me on that, so --
19
20 Q. All right. Are you able to indicate who that person
21 was?
22 A. Oh, I can. Helen Keevers.
23
24 Q. Have a look at paragraph 7 of your affidavit, if you
25 would. Was your first contact with Detective Shaun McLeod
26 when he was attached to Strike Force Georgiana on either
27 25 January 2008 or 11 February 2008?
28 A. Yes.
29
30 Q. How are you able to define it was one of those two
31 dates?
32 A. Because I took my lawnmower in to be fixed at a place
33 called Bridge Mowers at East Gosford and that was the one
34 and only time I ever took it there, because my lawnmower
35 person wasn't there, so I can't remember whether it was the
36 day I dropped it off or the day I picked it up. They
37 confirmed to me that that was the drop-off and
38 pick-up date.
39
40 Q. Do you have a memory of talking to him on one of those
41 trips?
42 A. I was standing - yes, when the phone rang I was
43 actually standing outside Bridge Mowers at East Gosford and
44 it was probably about a 20-minute conversation as I stood
45 outside the police.
46
47 Q. The context of that conversation was that

1 Detective McLeod telephoned you?
2 A. Yes.
3
4 Q. And he wanted you to place certain material --
5 A. An opinion piece.
6
7 Q. -- in an opinion piece?
8 A. Yes.
9
10 Q. Did you get the impression that he thought that would
11 be beneficial to investigations that he was making about
12 somebody called [NP4]?
13 A. He was hoping it would prompt people to come forward
14 about that particular matter.
15
16 Q. Is that something that has happened from time to time
17 in your professional work? If we can treat one category
18 where you're contacting police officers to seek
19 confirmation about involvement or progress of an
20 investigation, is that one class of contact?
21 A. Yes.
22
23 Q. And then another class of contact is police officers
24 telephoning you?
25 A. A much more restricted class, yes.
26
27 Q. And that was --
28 A. This was unusual.
29
30 Q. -- an example of the second case, but unusual?
31 A. Yes.
32
33 Q. Had it ever happened to you before?
34 A. No. My memory is that this would have been the first
35 time.
36
37 Q. Was it as a result of Detective McLeod calling you,
38 whatever date it was in early 2008, about the [NP4] matter,
39 was that the reason that you ultimately contacted him when
40 you came to have some documents in your possession about
41 McAlinden?
42 A. Not in relation to the [NP4] matter. We had had
43 discussions about another person who - I'm not sure what
44 his pseudonym is.
45
46 Q. Just have a look at this document, if you would,
47 Ms McCarthy. I'm grateful to Mr Irving for ferrying

1 material to the witness box.
2 A. None of those.
3
4 Q. I don't want you to mention the person.
5 A. I know you don't want me to mention them.
6
7 Q. Are you able to tell the Commissioner how it was that
8 you first came to have some documents that related to key
9 decisions that were made or apparently made within the
10 diocese that related to McAlinden and certain processes?
11 I don't want you to go into the detail, but you got some
12 documents?
13 A. Yes, I did.
14
15 Q. How did you get those documents?
16 A. I was contacted by [AL] in - it was September/October
17 2009 and she knows that I like to collect documents and
18 pieces of paper. She rang me up and said that she had
19 these documents, would I like them? I said, "Yes, next
20 time I'm up that way I'll drop by," which I did, and she
21 gave them to me. And there were a couple of letters and
22 I actually copied out the letters. I can't even remember
23 why I made a distinction between the two.
24
25 Q. At the time that [AL] gave you those documents in
26 later 2009, did she say what she wanted you to do with
27 them?
28 A. No, no, it was just - you know, she knows I like to
29 collect documents. She thought I might like these ones and
30 I offered to copy them and give her the originals back.
31
32 Q. Was it an explicit part of your conversation with her
33 that you might use them for the purposes of writing
34 articles or an article?
35 A. No. No.
36
37 Q. Was it an explicit part of your conversation with her
38 at that stage that you might pass them on to the police?
39 A. No. No.
40
41 Q. You ultimately did pass those documents on to the
42 police?
43 A. Yes.
44
45 Q. Did [AL] know that you were going to do that?
46 A. Yes.
47

1 Q. Some time between you first getting them in about
2 September 2009 and you making contact with Detective McLeod
3 in about April 2010 - is that right - you had a
4 conversation with [AL] where she --

5 A. Yes. I think it was after I had a look at them. As
6 I said, I filed them. I was working. I didn't even -
7 I must have scanned them. The significance of them just
8 obviously went straight past me and it was only after a
9 phone call from somebody in April 2010, that I pulled them
10 out and that's when the significance of them struck.

11
12 Q. When you say "scanned them", you are meaning that in
13 the old-fashioned word of skimming over them?

14 A. Yes.

15
16 Q. Could you look at volume 1 of 3 there, which is part
17 of the tender bundle in relation to term of reference 1?
18 You might helpfully keep that volume in front of you.
19 Would you look behind tab 27.

20 A. Yes.

21
22 Q. Is the short situation that when you first contacted
23 Detective McLeod, that he was going on leave?

24 A. He was on leave.

25
26 Q. And he indicated that he would be grateful to meet
27 with you and take hold of the documents when he returned
28 from leave?

29 A. Yes.

30
31 Q. The document that is behind tab 27, the first document
32 is a receipt that both you and Detective Senior Constable
33 Shaun McLeod signed at Charlestown police station on
34 23 April 2010 when you handed certain documents to him?

35 A. Yes.

36
37 Q. Would you just look without saying all of the detail
38 of what's behind there, but satisfy yourself that the
39 documents that are behind that receipt until the marker for
40 tab 28 are the documents that you provided?

41 A. Yes.

42
43 Q. Did you provide him with all of the documents that
44 [AL] had provided to you at this stage?

45 A. Yes. The ones that don't appear are the handwritten
46 ones, the copies. I think I might have said to him that
47 she had the originals of those and I think he got them from

1 her - I think.

2

3 Q. In any event, you, apart from maybe keeping some
4 handwritten copies, otherwise provided McLeod with
5 everything that [AL] had given to you?

6 A. Yes.

7

8 MR HUNT: Could I just have a moment with my friend,
9 Mr Gyles?

10

11 (Mr Hunt and Mr Gyles conferred)

12

13 MR HUNT: Mr Cohen helpfully reminds me of the time. It
14 is a perfect time to take the luncheon break, if that suits
15 you, Commissioner.

16

17 THE COMMISSIONER: Thank you. We will adjourn until
18 two o'clock.

19

20 **LUNCHEON ADJOURNMENT**

21

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1 **UPON RESUMPTION:**

2
3 MR HUNT: Commissioner, while the witness is coming back
4 up, there has been a request that exhibit 27 be released to
5 the press and I would be grateful, if anyone at the Bar
6 table has an issue you about that, that they contact
7 Ms Lonergan about it by 4 o'clock.

8
9 And Ms McCarthy understands she's bound by the
10 affirmation she took before the break.

11
12 THE COMMISSIONER: Yes, I am sure.

13
14 MR HUNT: Q. Ms McCarthy, what I want to do is now keep
15 moving through the chronology of relevant events after the
16 time that you provided the documents that you had got from
17 [AL] to Detective Senior Constable MacLeod?

18 A. Yes.

19
20 Q. You had a discussion with Inspector Dave Waddell from
21 Lake Macquarie relative to the issue of what was required
22 for the police to initiate an investigation?

23 A. Yes.

24
25 Q. Did you talk to him because he was Waddell's - I mean
26 MacLeod's supervisor. Is that how you came to talk to him?

27 A. Yes. Shaun MacLeod probably referred me to him -
28 I think.

29
30 Q. What was the effect of the conversation that you had
31 with Inspector Waddell about what would be required to
32 initiate an investigation in terms of there being a
33 complaint on --

34 A. There needed to be a complaint from [AL]. There
35 needed to be a formal thing from her.

36
37 Q. Did you then have a discussion with [AL] and you
38 understood that she came to make something in writing?

39 A. Yes.

40
41 Q. I think in April 2010 you contacted DCI Fox about this
42 matter as well?

43 A. Yes.

44
45 Q. Does that contact represent, first of all, the next
46 relevant contact that you had with DCI Fox apart from those
47 ones you gave evidence of before lunch?

1 A. Yes.

2

3 Q. Does that incident when you first are in touch with
4 him in April 2010 represent the first time that you talked
5 to DCI Fox relative to this general topic at all?

6 A. Yes.

7

8 Q. Given that you had had a communication - and indeed
9 handed the documents to Detective Senior Constable MacLeod
10 and had a discussion with Inspector Waddell - what was your
11 purpose in talking to DCI Fox about the matter?

12 A. To write the articles. MacLeod was in relation to -
13 MacLeod, when I spoke to him - sorry, I gave him the
14 documents, but Fox was in relation to preparing the
15 articles, so getting some more information.

16

17 Q. Do we understand from that that you had a different
18 attitude to Detective Senior Constable MacLeod because he
19 was the one that you understood at that stage was
20 investigating the [AL] material?

21 A. Simply, that he was the obvious one to hand the
22 material over to, and I'm a journalist, you just talk to
23 anybody. At that stage, I was talking to a lot of people.

24

25 Q. Are you able to articulate for the benefit of the
26 Commissioner what it was about Fox or why you went to Fox,
27 at that stage, to have some discussions that might end up
28 in articles?

29 A. In the same way that I also contacted Troy Grant.
30 I think it was just who had I spoken to in 2007. Grant was
31 in relation to Vince Ryan, so the Ryan matter was obviously
32 also pertinent to, you know, writing an article.

33

34 Q. Can I just understand this: was your first contact
35 with DCI Fox about writing an article was that because of
36 his connection with the Fletcher matter?

37 A. Simply that I'd spoken to him in 2007 as well. So
38 when I wrote the 2007 McAlinden articles, it was on the
39 basis of, you know, the laicisation, the attempted
40 laicisation was sort of mentioned but it was this benign
41 thing. And then when I got the documents in 2010, it was
42 like, well, actually, no, it was a much more serious thing
43 showing knowledge. So I just revisited - you know, I spoke
44 to Broken Rites. I spoke to a lot of people.

45

46 Q. Can you remember in April 2010 the kind of material,
47 if any, that you got from DCI Fox?

1 A. Nothing. I mean, I contacted him, I suppose to make
2 it clear. Because had I documents in front of me and they
3 said certain things, which was different to our
4 understanding in 2007, then I went to, you know, Fox for
5 comment, Grant for comment, because it was people in the
6 church had knowledge of things. So it was more to see if
7 there was any possibility of comment, I suppose, which
8 I don't think happened.

9

10 Q. And I think part of the knowledge that you had from
11 Fox in 2007 was that there had been an arrest warrant taken
12 out in relation to McAlinden at that stage?

13 A. Yes.

14

15 Q. Or at some earlier time?

16 A. Yes.

17

18 Q. In the conversations that you had with him in April
19 2010, did that include him talking to you about what the
20 former Bishop Clarke had said to him?

21 A. Yes.

22

23 Q. What can you tell the Commissioner about that?

24 A. Fox said - because I read out part of I think Clarke's
25 letter to McAlinden, in 1995, and then Fox responded that
26 he was angry, I think, and that's when he said that Clarke
27 had - he'd spoken to Clarke, I think he said in 2002 or
28 2003, and said that Clarke had denied any knowledge of
29 McAlinden as an offender.

30

31 Q. In the context of the conversation with Fox, did you
32 understand that that conversation that he had had with
33 former Bishop Clarke was a formal or an informal
34 conversation?

35 A. I don't - I'm not sure. I think he might have said
36 that he interviewed Clarke. He mentioned the other
37 detective - Joy.

38

39 Q. As being the --

40 A. As being with him as well. So I got from that that
41 there was some kind of, you know, two detectives going to
42 speak with him - yes, with Clarke.

43

44 Q. Whether authored or authored by opinion pieces
45 authored by other people, there were a number of articles
46 on 28 and then 29 April 2010?

47 A. And there were follow-up ones as well, yes.

1
2 Q. As a result of those articles, did the person with the
3 pseudonym [AJ] contact you on 3 May 2010?
4 A. Yes.
5
6 Q. I think the position was that [AJ] didn't first reveal
7 her identity to you?
8 A. That's correct.
9
10 Q. But what sort of things did she tell you in broad,
11 without mentioning names, just broadly the kind of
12 information that she gave you?
13 A. Yes. She identified that she was a victim of
14 McAlinden. She identified her relationship with people
15 within the diocese. She identified some conversations
16 she'd had with people whose names were familiar to me. She
17 identified certain things that she alleged had happened.
18
19 Q. Did you have a view about the utility of the material
20 that she gave you for purposes that were unrelated to
21 publishing of articles?
22 A. Yes.
23
24 Q. What was that?
25 A. That basically she was somebody who clearly would have
26 been able to assist police or certainly she had information
27 that I thought might have helped police.
28
29 Q. Did you ultimately come to know her identity?
30 A. Yes.
31
32 Q. How did that happen?
33 A. I can't - I don't think it was the next conversation
34 that we had, but possibly the third, by the third
35 definitely, she'd identified herself. And she was somebody
36 that I'd contacted three years earlier and left a message
37 for.
38
39 Q. Was that because her details had come to you in some
40 fashion?
41 A. Yes.
42
43 Q. From a source?
44 A. From a source, yes.
45
46 Q. But that attempt to contact her in 2007 had been
47 fruitless in that it hadn't --

1 A. I attempted again, but she didn't reply.
2
3 Q. Yes. I think the next thing that happens in the
4 chronology, as we step through it date by date, is that you
5 had a relatively lengthy conversation with Inspector Dave
6 Waddell?
7 A. Yes.
8
9 Q. At Lake Macquarie on 4 May?
10 A. Yes.
11
12 Q. Included in that were you indicating to - first of
13 all, Inspector Waddell indicated to you that Strike Force
14 Georgiana was closing up some cases. But at that time it
15 looked like the matter that you had been talking to him
16 about, that is, the [AL] papers that had been handed by you
17 to Detective Senior Constable McLeod, looked like it would
18 be sent to Newcastle Local Area Command?
19 A. Yes.
20
21 Q. You, in turn, indicated that you would be - "you"
22 being the Newcastle Herald - writing some articles on
23 concealment and other issues --
24 A. There would be the obvious follow-up articles, yes.
25
26 Q. Inspector Waddell said words to the effect that he
27 felt sorry for Bishop Malone because of the cooperation
28 that Malone had shown?
29 A. Yes.
30
31 Q. And you broadly agreed with those propositions, but
32 also pointed out to him your view that the bishop,
33 nonetheless, was the representative of an organisation that
34 had other responsibilities that you didn't think had been
35 met, in effect?
36 A. Yes.
37
38 Q. The inspector went on to say some things about the
39 challenges of proving concealment matters?
40 A. Yes.
41
42 Q. You made your response about your opinion in relation
43 to those things?
44 A. Yes.
45
46 Q. Waddell said to you, effectively, that the church
47 wasn't being treated as a special case?

1 A. Yes.
2
3 Q. You gave him your opinion that you thought the church
4 maybe was being treated in a different fashion. In
5 conclusion, Waddell told you that there would be an
6 assessment of the information to see where the
7 investigation would go and that that would take about a
8 week?
9 A. Yes.
10
11 Q. In response to that, you had some communications with
12 Andrew Morrison of senior counsel?
13 A. Yes.
14
15 Q. He was a representative of the Australian Lawyers
16 Alliance?
17 A. Yes.
18
19 Q. Is it a fair proposition that the Australian Lawyers
20 Alliance, or certainly Mr Morrison or both of them, had
21 similar interests and concerns in relation to this issue?
22 A. Yes.
23
24 Q. That you had from time to time quoted Mr Morrison as a
25 representative of the Alliance and continued to in terms of
26 these issues?
27 A. Yes. I was talking with Andrew Morrison at the time,
28 because, in amongst the follow-up articles were some in
29 relation to the church's handling of a Catholic lay
30 teacher. And so that article I think appeared on the 3, 4,
31 5, 6 May - something like that.
32
33 Q. Was Mr Morrison representing you or did he have some
34 different relationship --
35 A. No, he wasn't representing me.
36
37 Q. How would you articulate your involvement with him or
38 the alliance in terms of this journalistic assignment that
39 you were undertaking?
40 A. He represented an organisation. He was also a senior
41 counsel with some expertise in this area or certainly
42 knowledge and he was a very useful person - contact,
43 I think.
44
45 Q. Toward the conclusion of the conversation that you
46 have already given evidence about with Inspector Waddell,
47 did he refer you to Inspector Tony Townsend after you said

1 you intended or hoped to run an article in relation to the
2 police view about the "McAlinden" documents and by
3 "McAlinden" documents, I think you mean the documents that
4 [AL] had given to you; is that right?

5 A. [AL] - yes.
6

7 Q. Did you end up quoting Inspector Townsend in an
8 article on that issue?

9 A. Yes.
10

11 Q. Was that an article that was published on 6 [sic] May
12 2010?

13 A. Yes.
14

15 Q. Did you understand why it was that Inspector Waddell
16 had invited you to be in contact with Inspector Tony
17 Townsend?

18 A. Yes. I think Inspector Townsend was the operations
19 manager and because it was being - there was already
20 reference to it might go to Newcastle, well, it made sense
21 that there would be somebody with a more overarching
22 position to comment at that point. So I didn't think
23 anything of it.
24

25 MR HUNT: Just bear with me for a moment, please,
26 Commissioner.
27

28 Q. I will just show you this document. Is that the
29 article that you have just given evidence about?

30 A. Yes.
31

32 MR HUNT: I tender that. Really, the basis, Commissioner,
33 is for completeness in terms of indicating some of the
34 times in which the witness published material.
35

36 THE COMMISSIONER: That's an article of 6 May 2010; is
37 that right?
38

39 MR HUNT: That's so.
40

41 THE COMMISSIONER: That will be admitted and marked
42 exhibit 28.
43

44 THE WITNESS: I think it is actually marked 8 May.
45

46 THE COMMISSIONER: Is it?
47

1 THE WITNESS: The one I've got. Sorry, I think we might
2 have - maybe I've written down --

3

4 MR HUNT: Q. I might have led the wrong date in error
5 from the affidavit. In any event, that's the article
6 you're talking about?

7 A. Yes.

8

9 THE COMMISSIONER: It is 8 May.

10

11 MR HUNT: Is there a copy for you, Commissioner?

12

13 THE COMMISSIONER: Not as yet, but I'll take your word for
14 it.

15

16 MR HUNT: It hardly seems fair, Commissioner, that
17 everybody else should have a copy and you don't.

18

19 **EXHIBIT #28 ARTICLE FROM THE NEWCASTLE HERALD, DATED**
20 **8/5/2013**

21

22 MR HUNT: Q. Would you now look at tab 33 at volume 1
23 that you've got open there. Just directing your attention
24 not to the section of the email where it is forwarded on to
25 other sections within the NSW Police Force, but do you see
26 that at the bottom of the first page and the second page is
27 an email that you forwarded to Shaun MacLeod; is that
28 right?

29 A. Yes.

30

31 Q. Is the position that you were advising, amongst other
32 things, Detective Senior Constable MacLeod of the existence
33 of [AJ] without naming her?

34 A. Yes.

35

36 Q. What was your purpose in telling MacLeod about the
37 existence of somebody like --

38

39 MR ROSER: It is [AL]. I think my friend said [AJ].

40

41 THE WITNESS: The second woman is [AJ].

42

43 MR HUNT: Q. The second page, where you say "the second
44 woman"?

45 A. That's [AJ].

46

47 Q. That's [AJ]. Thank you. What was your purpose in

1 advising Shaun MacLeod of the existence of somebody in
2 [AJ]'s category?
3 A. Having given MacLeod the documents and then
4 subsequently having this contact with [AJ], I just thought
5 obviously he would want to know.
6
7 Q. On 9 May you contacted Strath Gordon of the NSW Police
8 Media Unit?
9 A. Yes.
10
11 Q. And that was to see if the media unit would authorise
12 Grant to comment on certain things?
13 A. Yes.
14
15 Q. Why did you go through the Police Media Unit on that
16 occasion?
17 A. That was at Mr Grant's request.
18
19 Q. Effectively, he said that he wouldn't provide a
20 comment unless there was some --
21 A. Oh, we had a discussion, but he just - that was the
22 way he wanted to do it, so that was fine.
23
24 Q. Had you needed to do that with other officers in the
25 past?
26 A. No, but subsequently I have. I mean, that's nothing -
27 some officers do it that way. He wasn't in that command,
28 so, again, I didn't think anything of it.
29
30 Q. Effectively, you were asking him to comment on
31 something from a command that he'd moved on from?
32 A. Yes, and he wanted to - I think he just wanted to do
33 it that way.
34
35 Q. Would you now look behind tab 40 of volume 1. Does
36 that email relate to you providing, under cover of the
37 email, certain materials relative to the witness [AK]?
38 A. Yes.
39
40 Q. How did you get the [AK] materials?
41 A. I think [AL] had contacted [AK] and they'd had a
42 discussion and [AK] forwarded it to me, so I can't remember
43 if we - if I spoke to [AK] and gave her the email address
44 or whether [AL] gave her the - I don't remember.
45
46 Q. Can you remember whether [AK] authorised you to
47 provide her documents to the police?

1 A. That was the point of her contacting me with it, yes.
2
3 Q. Do we understand from that that the reason that [AK],
4 to your understanding, gave you the documents was
5 principally for them to be provided to the police rather
6 than necessarily for articles?
7 A. Yes.
8
9 Q. Yes.
10 A. Oh, I think - it was probably for articles too, but
11 I --
12
13 Q. You're not saying that you were quarantined from using
14 it for articles?
15 A. No.
16
17 Q. But you know you were authorised to forward them to
18 the police?
19 A. Yes.
20
21 Q. I understand. Can you now remember why it was that
22 you forwarded that material to then Detective Chief
23 Inspector Tayler?
24 A. I didn't know - I didn't know him at that point, so
25 I'm - I'm pretty sure it would have been because Waddell
26 had asked me to or MacLeod had asked me to. One of them
27 had asked me to, so --
28
29 Q. You had come to understand that the papers that you
30 had provided to MacLeod from [AL] were now being looked at
31 in Newcastle LAC rather than Lake Macquarie?
32 A. Yes. Well, that Tayler - to tell you the truth,
33 Tayler being at Newcastle didn't really resonate with me.
34 It was just there were different police looking at it, so
35 it --
36
37 Q. Somehow you got to know that Tayler was the person
38 that --
39 A. Yes, that I had to send these things to.
40
41 Q. You, I think, checked your email records both to
42 prepare your affidavits and for the purposes of answering a
43 summons by this Special Commission?
44 A. Yes.
45
46 Q. Does it seem to you, on that review, that 7 June 2010
47 represents the first occasion that you sent an email to

1 DCI Fox about this issue?
2 A. Yes.
3
4 Q. I think you sent him some Herald articles by you on
5 8 June because he requested them?
6 A. Yes.
7
8 Q. Did you understand from him in the context of any
9 communications between the two of you, why he wanted those
10 articles?
11 A. Background; he just wanted to see - my memory is that
12 he just asked me for anything that I'd written about
13 McAlinden as background.
14
15 Q. Did you understand from things that he communicated to
16 you that he was investigating something to do with
17 McAlinden or thinking about investigating something to do
18 with McAlinden?
19 A. That he had an interest in it because of - he'd been
20 involved with it earlier on. At that point he was just one
21 of the police who was looking at it, as far as I was
22 concerned.
23
24 MR HUNT: The article, I think it is exhibit 28, is it,
25 Commissioner, the article of 8 May?
26
27 THE COMMISSIONER: Yes, Mr Hunt.
28
29 MR HUNT: Thank you.
30
31 Q. That had included reference attributed to Inspector
32 Tony Townsend that there might be a pooling of police
33 resources?
34 A. Yes.
35
36 Q. Did you draw any view about DCI Fox being in contact
37 with you about McAlinden relative to those comments from
38 Inspector Townsend?
39 A. Only that the pooling of resources, that it made sense
40 to me, that McAlinden had been all over Maitland-Newcastle,
41 all over the Hunter, so obviously there would be different
42 police perspectives and if there was going to be an
43 investigation, they might sort of draw on people from
44 different parts of the Hunter.
45
46 Q. To the extent that you said that McAlinden had been
47 all over the Hunter, was that something that you'd come to

1 understand because of accounts that you'd received from
2 complainants and victims?

3 A. Yes. And also Broken Rites had provided me with a
4 record of some of the places that he had been at in the
5 Hunter. They had the Catholic priest registry thing, so
6 they provided me with a bunch of different parishes he'd
7 been at.

8

9 Q. Some time in June, you became aware that Detective
10 Senior Constable MacLeod wasn't going to investigate
11 himself the McAlinden matters?

12 A. Yes.

13

14 Q. Can you remember how you became aware of that?

15 A. I've thought about it. I'm not sure whether it was in
16 a discussion with Waddell first, where he'd given an
17 indication that Shaun MacLeod wouldn't be because of his -
18 he'd done enough in the Catholic Church sort of thing and
19 Waddell was concerned for his welfare, or whether it was
20 MacLeod himself who indicated something. I think it might
21 have been Waddell's indication first that MacLeod wasn't
22 going to; and then, subsequent to that, Shaun confirmed
23 that he wasn't going to.

24

25 Q. And there were issues - whether it was by Waddell or
26 MacLeod, there were certain issues about stress and stress
27 leave raised?

28 A. Yes.

29

30 MR HUNT: Bear with me for a moment, please, Commissioner.

31

32 Q. Do you recall that you received an email from DCI Fox
33 on 22 June that included his comment to you something like
34 at least, "There are a few things going on behind the
35 scenes that concern me a bit."

36 A. Yes.

37

38 Q. Did you have any understanding of in fact what he was
39 talking about by setting that out?

40 A. No.

41

42 Q. Did you draw your own conclusions about --

43 A. I drew some conclusions because I think by the 22nd
44 I would have known that MacLeod wasn't doing it. There
45 might have been indications from MacLeod that he'd wanted
46 to and wasn't going to be. Also, from the initial
47 responses from police, the thing about raising the issue of

1 Malone being a good person, it was obvious, I was asking
2 them a fair bit, that we were looking at conceal -
3 I already knew by then an investigation of Catholic Church
4 and conceal hadn't been done and we were entering new
5 territory.

6

7 Q. Did you know that just from generalised research that
8 you'd done about other articles or --

9 A. In terms of --

10

11 Q. -- about the idea that there hadn't been any police
12 investigations of concealing offences in a Catholic Church
13 context?

14 A. I'd spoken to - Andrew Morrison I think was the first
15 person I'd spoken to about that, was he aware of any other
16 prosecutions. He wasn't. I spoke with one of our company
17 lawyers at the time. It was more from that side of things.
18 Section 316, there's material available on section 316
19 that's readily available in the Law Reform Commission.

20

21 Q. Was it around this time, in other words, towards the
22 end of June or early July 2010, that you became aware from
23 [AJ] that she wished to speak to police about things she
24 had to recollect and say?

25 A. Yes.

26

27 Q. Did you make a recommendation as to who she should
28 speak to?

29 A. She wanted to speak to police and because I wasn't
30 sure what the police were actually doing at that point, we
31 ended up with - I suggested Peter Fox.

32

33 Q. Given that you had forwarded the [AK] material to
34 Chief Inspector Brad Tayler, did you give any thought to
35 him being --

36 A. No.

37

38 Q. -- the one to be in contact with [AJ]?

39 A. I went with Peter Fox mainly because Fox had been
40 involved with the Fletcher investigation, so to me it was
41 logical to go with somebody that I knew had already been
42 involved in such an investigation and that I also had
43 first-hand comment back from the victim and his family that
44 they thought he was very supportive.

45

46 Q. In relation to the Fletcher matter about DCI Fox?

47 A. Yes. I didn't know if Brad Tayler - there was nothing

1 against Brad Tayler, but I just didn't know anyone else.

2

3 Q. How did you make the referral or what happened in
4 terms of, first of all, any discussion between yourself and
5 [AJ] about the idea of DCI Fox being involved in taking her
6 statement?

7 A. I just said, "Look, I'm aware of one police officer,
8 Peter Fox, involved with the Fletcher matter", and [AJ]
9 responded that she'd heard of him. She knew - the name was
10 familiar.

11

12 Q. Could I just double back. Look at tab 51 for a moment
13 just for completeness. This is going back to that email
14 exchange that I asked you about a moment ago, I'm sorry.
15 Do you see that, before we get to your reply on the same
16 day, there is an email to you from DCI Fox at his police
17 address, on 22 June 2010, first of all, asking you for a
18 contact for [AC]?

19 A. Yes.

20

21 Q. Did you ultimately give him a contact for [AC] after
22 you got her permission? Do you recall that or not?

23 A. I don't think so.

24

25 Q. In any event, that was an example, was it, of DCI Fox
26 wanting some information from you relative to your own
27 investigations or contacts with people?

28 A. Yes.

29

30 Q. You will see the final paragraph is:

31

32 *There have been a few things going on*
33 *behind the (police) scene that concern me a*
34 *bit. I'll discuss with you later.*

35

36 A. Yes.

37

38 Q. Then in your response, apart from, first of all, you
39 indicated you want to contact [AC] before providing her
40 material to DCI Fox?

41 A. Yes.

42

43 Q. Then in your last paragraph of the response sent that
44 same day:

45

46 *The behind the scenes police stuff doesn't*
47 *surprise me.*

1
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A. Yes.

Q. What did you mean by that?

A. What I was talking about earlier. When I spoke with, say, Waddell in particular, it was just the - not wholeheartedly sort of buying into the idea of investigating and I'm not saying that necessarily in a negative way. It's just I've been writing this stuff for three years and people's initial response - and so I started with sort of the community then and people have this thing, "But it's the church", I suppose is the best way of explaining it. So in some of Mr Waddell's responses, and I forget what his rank is --

Q. Inspector.

A. Inspector, sorry - it was that sort of thing, which is not saying you're against something, but it's just there is this step that you have to take, and that's what I meant that there was those little things - that "Malone's done such good work" and some of the other responses he gave: so the behind-the-scenes stuff. It's just we have to make that step yet, if that makes sense.

Q. All right. When you were saying in response to DCI Fox's comment "The behind the scenes police stuff doesn't surprise me", you were talking about this idea of there being some inertia to get going on the investigation?

A. It's not inertia; it's just - I've described it to people that you have to jump a hurdle. The community has had to jump a hurdle on this, the media has had to jump a hurdle, the politicians have had to jump a hurdle. It is this initial "But it is the church" and you have to jump that hurdle and say, "Yes, but there's a crime."

Q. So, in this circumstance, back at this time where you were reflecting on Inspector Waddell being, you would have said, at the hurdle you didn't necessarily see anything wrong in that.

A. No.

Q. It was just a stage to go through.

A. Yes.

Q. I understand. In fairness to you, I asked you whether you were able to provide DCI Fox with [AC]'s contact details. Would you look behind tab 54. There is an email

1 that you then sent to DCI Fox on 23 June 2010?
2 A. Yes.
3
4 Q. I'm not being critical, there is a fair bit of
5 material --
6 A. No. I don't remember it.
7
8 Q. -- a fair reading of that is that you provided him
9 with [AC]'s contact details?
10 A. Yes.
11
12 Q. In context, does that mean you contacted [AC] and got
13 her permission?
14 A. She must have, said it, yes.
15
16 Q. Then you also on the next line provided another number
17 in response to a request by DCI Fox?
18 A. Yes.
19
20 Q. Then you provided some contact details from somebody
21 at Broken Rites as well?
22 A. Yes.
23
24 Q. And that was at DCI Fox's request?
25 A. Yes.
26
27 Q. So, in fairness, the character of that email at least
28 is you providing to DCI Fox material sourced from your
29 researches?
30 A. Yes.
31
32 Q. What did you assume that he was going to do with that
33 material?
34 A. Contact the people and expand his knowledge of what
35 was available.
36
37 Q. Does it seem to you, looking behind tab 52, that under
38 the heading, Fox to you on 23 June, is him asking you for
39 contact with Broken Rites, et cetera?
40 A. Yes.
41
42 Q. And the contact for the other number that you
43 provided?
44 A. Yes.
45
46 Q. He says this:
47

1 *If I am going to put a submission together*
2 *I need to get a few statements to support*
3 *it.*

4
5 Do you know what he meant by that?

6 A. As to an investigation.

7
8 Q. But the submission part of it, did you know what he
9 was talking about in terms of putting a submission forward?

10 A. How it would run.

11
12 Q. Higher up in that same email, there is some reference
13 to "Suzanne" and receiving an online comment from the ABC
14 website, suggesting to you that behind there is somebody
15 with the same first name as [AC], which is a slightly
16 unusual name --

17 A. Yes.

18
19 Q. -- with respect to "last Friday's Lateline." Can you
20 now think about what the Lateline would have been relative
21 to in June 2010?

22 A. I don't watch television at all, sorry.

23
24 Q. Don't be sorry, Ms McCarthy.

25 A. Honestly, I don't watch television at all. So I -
26 yes.

27
28 Q. Can I just ask you about this: after setting out some
29 things about [AC] having an unusual Christian name and so
30 on he says:

31
32 *Just thought I'd better let you know so*
33 *that the right hand knows what the left is*
34 *doing.*

35
36 Do you know what DCI Fox was meaning to communicate or what
37 he was talking about when he said those things to you?

38 A. Probably I suppose he was sort of thinking, "Oh, well,
39 I'm talking to you. Is it okay if I talk to another
40 journalist?" I can't say I thought much of it.

41
42 Q. Was there then an objective in mind? At that stage,
43 did you see that you were working with --

44 A. No.

45
46 Q. -- Fox on something where you were coordinating
47 efforts or something of that nature?

1 A. No. Really, I looked at that and it was just, "Is it
2 okay if I speak to another journalist?"
3
4 Q. I see. I am now going to take you back to your
5 conversations with [AJ].
6 A. Yes.
7
8 Q. You have heard some recommendations about how DCI Fox
9 had comported himself from the view of the victim's family
10 in relation to the Fletcher prosecution?
11 A. Yes.
12
13 Q. That was one of the things you had in mind when you
14 thought that he was the police officer that [AJ] should be
15 in contact with?
16 A. It was a big step for her to speak to police and
17 I wanted her to be looked after.
18
19 Q. Did you have a conversation with her about the idea of
20 DCI Fox being the person that she ought or could speak to?
21 A. His was about the only relevant name where I could -
22 that I knew was looking at this - where I could give a
23 firsthand recommendation, you know. I know from speaking
24 to the family of the victim and the victim in the Fletcher
25 matter that they speak very highly of him.
26
27 Q. Did you have any involvement in bringing the two of
28 them together in terms of the practical arrangements of him
29 being in contact with her or her being in contact with him?
30 A. I gave Peter Fox her contact details.
31
32 Q. And you later came to understand that he must have
33 contacted her?
34 A. Yes.
35
36 Q. Did he indeed from time to time communicate in a
37 general fashion to you that he was speaking with [AJ] and
38 that it was going well?
39 A. Yes, and she told me that as well.
40
41 Q. I might have slightly got the timeline wrong when
42 I suggested it was maybe later June or early. Would you
43 just look back behind tab 51 at the moment, Ms McCarthy.
44 I'm sorry to make you jump all over the place with the
45 tender bundle. You will see that in the place where he
46 asks for a contact for [AJ], [AC] that thereafter he says
47 on 22 June:

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I am gradually working through all you sent me.

A. Yes.

Q. And:

(As my wife will testify) I am progressing with [AJ] and this may be very promising.

A. Yes.

Q. Did that represent, effectively, an update that things were progressing?

A. Yes.

Q. Did you come to know that he and [AJ] had met on a number of occasions for her to provide a statement?

A. Yes.

Q. You can separate your answer if you need to. In terms of DCI Fox's interviewing of [AJ] and then what you imagined was the steps that he would take to follow up with, say, [AC] and the school official that's mentioned in some of the email trail, did you have a view at that stage whether whatever it was that DCI Fox was doing in relation to those various people was part of an official police investigation or rather some surreptitious covert investigation? What would you tell the Commissioner about that?

A. I just thought that [AJ] had come forward saying she was, you know, ready to give a statement, so it made sense, well, let's get this statement, that Fox's following up of other people was a collection of information. So to me I can't say that I gave it any thought. It was just - I know what I do as a journalist: you speak to everybody, you gather information, and the more information that you have - so to me this was just a police officer gathering information, other police officers were doing what they were doing, and then at some point they decide what they're going to do.

Q. Is it a fair proposition that there was nothing in terms of the way that you were dealing with DCI Fox at this stage that suggested something out of the usual?

A. No.

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Q. That is something covert --

A. I don't know how police work. I know how journalists work and I know how I've worked on these matters with other journalists through Fairfax. We each have our particular things and then, you know, at the point where an article has to be written, someone will do one thing and somebody will do something else. So to me it didn't - I wasn't registering anything untoward.

Q. Doubling back again, I'm sorry to do this, Fox indicated to you, "There are things going on behind the (police) scenes ... I'll talk to you about it some time." Did he ever talk to you about what was going on behind the police scenes?

A. I don't remember any conversation about that. I wasn't thinking "I need to have a talk to him. Something dreadful is happening." So I don't remember a conversation at all.

Q. Until quite a bit later in 2010 when there's material that suggests that DCI Fox, at that stage. Was saying "look, I'm going to hold on to some statements unless I absolutely have to give them over", up until that point you weren't having conversations with Fox that suggested that he was running some kind of off-the-books investigation, if you like?

A. Obviously, he had a different approach to it to some of the other police. So that's probably a better way of putting it. Obviously, he'd jumped the hurdle, I suppose, is one way of putting it, and so he was pretty keen. Some of the other police weren't so keen compared to his keenness.

Q. According to your records, you have identified that Stephen Rae, a police officer, telephoned you on 13 August 2010?

A. Yes.

Q. Had you had conversations with Officer Rae before?

A. No.

Q. What was the context of the conversation that you had with him?

A. I was on my way down to Sydney to see a play and I had my phone and it came up "private number". It was after work, because the play was on at sort of 8 or 8.30 or

1 something, and I had to pull over at Pymble or Gordon or
2 something like that. I thought it was one of the subs
3 checking on copy or something, and then he identified
4 himself as a police officer, Stephen Rae, and started to
5 talk.

6
7 I was in one of those clearway things, you know,
8 I didn't fancy being run up the back, so I said to him,
9 "Could I get your number. I want to go around corner."
10 I didn't say, "I want to go around the corner." I said,
11 "Can I ring you back?" He said, "Yes" and gave me a
12 number. I went around the corner, rang the number back,
13 and we had a conversation. If I was asked to give a time,
14 I would say it was six something.

15
16 Q. Was that a conversation that you took notes of at the
17 time?

18 A. No. It was on the side of the road in the dark.

19
20 Q. What's your broad recollection of that conversation?

21 A. He was ringing me about the McAlinden matter to have a
22 discussion with me about it.

23
24 Q. Did he tell you his relationship with the matter in
25 the sense he was the officer in charge or working with
26 somebody or --

27 A. No. No, I don't remember - I remember him saying
28 something about the northern command. I got the impression
29 he was senior, but in one of those overarching positions,
30 like Inspector Townsend, and it was just a discussion.
31 I can't remember exactly how he started it, but it related
32 to the documents, my expectations, the expectations of
33 victims. At a certain point - oh, he also discussed the
34 difficulties of section 316, the conceal matters, you know.
35 So we sort of chatted along those lines.

36
37 At a certain point, he said the thing about that there
38 was just the documents, that there was nothing to prosecute
39 with the documents, which sort of surprised me a little
40 bit, and that was when I was thinking - I got the
41 impression he was sort of sussing out how I felt about it
42 and maybe how strongly I felt about it.

43
44 Q. Would he have come to know how you felt about it in
45 the context of the conversation?

46 A. Well, I was interested in where it was going to go.
47 So, you know, we had a friendly conversation and I was

1 interested in, again, that thing about jumping the hurdle
2 which sounds ridiculous, but it is sort of: where is this
3 person at in terms of the belief that everyone talks about
4 priests being transferred from parish to parish and all
5 that kind of stuff? It's almost like it's, "Oh, well,
6 we're not going to do anything about it." So that's the
7 jumping the hurdle thing. I just wanted to get his ideas
8 about it, and that's when he said the thing about the
9 Catholic Church and he raised the issue that prosecutions
10 weren't the way to go with the Catholic Church, and then we
11 discussed - I can understand partly historic child sex
12 abuse matters the prosecutions, we know, they're difficult
13 and often the victims get hurt in that process again, but
14 then he talked about well maybe a "Truth and
15 Reconciliation" thing like they have in South Africa would
16 be a better way to go. And I thought in my head, "As if";
17 you know, at that point no-one was talking about that.

18
19 Q. Did you express any views to him about --

20 A. Not really, no.

21
22 Q. In a practical sense, did the conversation with
23 Officer Rae end with him telling you that Lake Macquarie
24 would be looking at the matter?

25 A. Yes. That it was going to be with Lake Macquarie and
26 it related to the fact that, you know, they'd had Strike
27 Force Georgiana, they had the expertise - something along
28 those lines.

29
30 Q. Did you have a view about the reasonableness of that
31 information or that proposal?

32 A. He's the overarching person, he said, in
33 Lake Macquarie and he seemed to be --

34
35 Q. You're doing things with your face to suggest that you
36 didn't really have --

37 A. Oh, no, it's --

38
39 Q. You weren't assessing the reasonableness of leaving it
40 to police?

41 A. Not really. It's not for journalists; it's not my -
42 if that's where it goes, that's where it goes.

43
44 Q. Did he suggest that you ought to phone Inspector
45 Waddell at some stage to confirm that material?

46 A. Yes. Because I think I indicated that, you know, that
47 fine I would like to write something about that - so, yes.

1
2 Q. Did you then contact Inspector Waddell?
3 A. Yes.
4
5 Q. What came of that?
6 A. It wasn't a very long conversation. He didn't sound
7 pleased, so --
8
9 Q. Did you get the impression that he had the file or
10 didn't have the file at that time?
11 A. Didn't have the file.
12
13 Q. All right.
14 A. And maybe he wasn't really happy that a journalist had
15 been told it was going back to him.
16
17 Q. Did he direct you or suggest that there was somebody
18 else that you should talk about --
19 A. I might have to check. I think he might have said
20 Tony Townsend. Was it back to Townsend or --
21
22 Q. Do you want to look at the very base of paragraph 30
23 of your affidavit, which is in the small white folder
24 there. You're looking for page 10.
25 A. Yes.
26
27 Q. If you go to the top of paragraph 31, it seems that
28 you did ultimately speak to Inspector Townsend?
29 A. Yes.
30
31 Q. Then he advised you to talk to an officer called
32 Inspector Fay Dunn?
33 A. Fay Dunn, yes.
34
35 Q. Did you understand she was attached to the Northern
36 Region in one of those overarching or assisting positions?
37 A. Yes.
38
39 Q. What could she tell you about the matter?
40 A. Nothing. She was nice. She was apologetic, but it
41 obviously was a phone call she wasn't expecting, so --
42
43 Q. Did you ultimately talk to Inspector Townsend again
44 and he indicated to you that the matter had been referred
45 to Newcastle and that there would be an officer allocated
46 to investigate the matter?
47 A. Yes.

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Q. By 3 September 2010, did you have a conversation with Andrew Morrison of the Australian Lawyers Alliance which led or was about the topic of the Australian Lawyers Alliance addressing a letter of concern about the McAlinden matter?

A. Yes.

Q. Was there thereafter a response from Assistant Commissioner Max Mitchell who declined to comment on the status of the investigation?

A. Yes.

Q. Have you searched the Newcastle Herald's computer archives and established that, in a period between 1 May 2010 and 30 September 2010, you wrote 11 articles that concerned McAlinden or the investigation in relation to him?

A. Yes.

Q. On 18 October, did you get an email from Detective Chief Inspector Fox, which was your first point at which you understood that he was not going to be part of an investigation in relation to the McAlinden matter?

A. Yes.

Q. Would you just a look behind tab 71.

A. Is that annexure U?

Q. You will need to go to volume 2, I'm sorry. Do you see there behind tab 71 is that email?

A. Yes.

Q. Had you understood that that was something that was likely to happen from your conversations with DCI Fox ahead of that time?

A. I don't think so.

Q. Could I just ask you about this part of it. DCI Fox says:

I may have to part with the other statements if they push. I will argue over [AJ]'s statement due to her insistence on confidentiality and her mental state, but if they 'Departmentally Direct' me I will have no choice.

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Did you understand in the context of any prior discussions between you and DCI Fox why it would be that he would say "I may have to part with the other statements if they push"?

A. No. It's obviously, you know, he was being told, "You're not doing it", but, no.

Q. Had [AJ] had conversations with you consistent with her insisting on confidentiality or things that suggested that she would only deal with DCI Fox rather than other police?

A. She was concerned for her privacy. I can't say that I can specifically remember any conversation with her - no, I just can't remember anything specifically on that.

Q. I just want to draw your attention to one other part of this email. You will see that DCI Fox, at the very bottom of the first page behind tab 71, says:

Both Humphrey and Haggett are practising Catholics from Nelson Bay ...

Had you had any earlier dialogue with DCI Fox about that kind of issue, about police officers and their religious affiliations?

A. No, not on - no. I know - look, he did raise it. But I'm pretty sure that was the first time there was any mention of "Catholic". He might have - I know he sort of waved it past me once or twice, but I didn't buy into it for reasons that I put in the affidavit.

Q. I want to come to those reasons. First of all, I want to ask you this: you express yourself in this way, chronologically after discussing the emails and the bit I've taken to you on 18 October, and you say:

I can only recall Fox referring to the possible religious beliefs of police officers once or twice after that.

A. Yes.

Q. In relation to that is that the conversations that you talk about there?

A. Yes.

1 Q. Did you get a sense that he was trying to explore your
2 appetite for something between religious persuasions of
3 officers and what they did or didn't do, or --

4 A. Possibly, but I think it was more just sort of
5 throwing it out there, putting it there and certainly not
6 pressing it.

7

8 Q. Just read to yourself now, paragraph 40 - that's the
9 slender volume there - because you express your own views
10 about why, from a journalistic point of view, you would
11 never, absent certain material, publish something along
12 those kind of lines about religious beliefs and action or
13 inaction?

14 A. Yes.

15

16 Q. Just refresh yourself, if you would, and I just want
17 you to tell the Commissioner why it is that you wouldn't
18 move to write an article based on that kind of speculation.

19 A. Simply because as a journalist - well, there are a
20 couple of reasons, defamation being the most obvious one -
21 just because someone is Catholic, it is then a very big
22 leap to say "Because you're Catholic, you're not able to do
23 your job." And within that leap, you've got an imputation,
24 you've got defamation. I've put it in there. Unless I had
25 an email or a document from, you know, police officer A to
26 police officer B saying, you know, "We're not going to
27 investigate priest X, who we think is a paedophile.
28 Because we're Catholic and we want to protect the church,"
29 unless I had a piece of paper saying that, and even then
30 I would be checking the veracity of that piece of paper,
31 you would not just write an article simply because it is
32 defamatory. That's one reason.

33

34 Then there's a much more obvious reason for the
35 Newcastle Herald, which I've put in the affidavit. My
36 parents are still practising Catholics. They're friendly
37 with Bishop Michael Malone, who used to be at their parish
38 in East Gosford, and I'm the one writing most of these
39 articles. So for somebody to suggest that because I was
40 raised Catholic and went to Catholic schools and my parents
41 are Catholic, the sort of guilt by association, is ridiculous.
42 It is just not an --

43

44 Q. Just to link that up, what you're saying is the way
45 you see the world journalistically and otherwise is that
46 you don't act on the guilt by association idea?

47 A. No, no, because it is just way too - our lawyers would

1 never - like, no way.

2

3 Q. You had come to have contact from time to time with
4 [AL]?

5 A. Yes.

6

7 Q. Would you characterise her as a friend or how would
8 you characterise your dealings or relationship with [AL] in
9 late 2010?

10 A. [AL] first contacted me in 2007 and she was very
11 distraught and we had a lot of contact, email and phone,
12 between 2007 and 2010. Friends - you know, there's
13 different categories of friends. I don't socialise with
14 [AL]. I don't socialise basically with any of the people
15 that I've had dealings with who are victims' families. Do
16 I have a relationship with them that's different to my
17 relationship, say, with Mr Irving? Yes. Do I have a
18 relationship with them that's different to my work
19 colleagues? Yes. Are they significant relationships?
20 Yes - simply because trust is the key to the relationship.

21

22 Q. This may seem like a stupid question, and it is not
23 meant to be, but is that driven by the kind of subject
24 matter that you find yourself talking with these people
25 about?

26 A. Yes, clearly, we're talking about things - we're
27 talking about suicides; we're talking about life and death
28 things; we're talking about why somebody, you know,
29 attempted suicide and didn't; we're talking - I'm talking
30 to family members where there have been deaths. I'm
31 talking to - these are significant relationships. [AL] had
32 a very difficult time between 2007 and - she's a very
33 strong woman, courageous but, you know, she knows I've got
34 her back. She's friends with another person who provides
35 more of the friend kind of contact, comfort for her.

36

37 Q. In the context of that kind of relationship with her,
38 did [AL] tell you that she was going to be interviewed by
39 personnel associated with Strike Force Lantle?

40 A. Yes.

41

42 Q. Did you have an attitude as to whether she should do
43 that?

44 A. Yes.

45

46 Q. What was that and what did you do about it?

47 A. Very supportive. I said that it was really - we had a

1 lot of emails, contact and phone, and she said that she was
2 scared about doing it but she wanted to and she needed to
3 do it and it was important enough, and I said, "It's really
4 good that you're doing it and I'm really pleased that
5 you're doing it."
6

7 Q. Did you have some contact with [AL] on 9 November 2010
8 on that issue of her having been or going to be interviewed
9 in relation to Strike Force Lantle?

10 A. Yes. She rang me up and she was really, really upset
11 and it was - it was difficult to really understand what had
12 happened, but she was very upset, crying. She was talking
13 about that she'd walked out of the interview because of
14 certain things. Did you want me to --
15

16 Q. Pick up your answer, if you could.

17 A. She alleged certain things that had happened in the
18 interview that she'd been sort of pushed about making a
19 statement. She was very upset about the fact that she was
20 called in to the police station to do it, the fact that -
21 sorry, she said that the times had been changed, that she
22 felt used because of it, and then that she'd got - she
23 readily admitted that she'd got upset and angry during the
24 interview. And then there was some kind of response from
25 the police officers about, you know, that her anger was
26 inappropriate or shouldn't have been accepted or something
27 along those lines, and she was also given, you know - she
28 had to make a decision about whether she was going to make
29 a statement and it had to be that day or some kind of - a
30 deadline set for when she had to make a decision about
31 making a statement.
32

33 Q. Did you get any sense from [AL] how much of her
34 statement had been taken?

35 A. No. We didn't talk about that.
36

37 Q. I think you've talked about another relationship that
38 [AL] has where she gets support of more of a friendship
39 kind?

40 A. Yes.
41

42 Q. Did you come to understand there was dialogue between
43 [AL] and that person to assist her to advance some concerns
44 that she had about what had happened in a written fashion
45 and a formal fashion to the police force?
46

47 A. Yes.

1 Q. Did you later come to understand that those matters
2 had been formalised in a complaint?

3 A. Yes.
4

5 Q. On 19 November, did you call Assistant Commissioner
6 Max Mitchell?

7 A. Yes.
8

9 Q. Why, at that stage, were you contacting him about the
10 matter?

11 A. I think maybe I'd been - oh, actually, no, it was
12 because of the letters from the Lawyers Alliance. At some
13 point it was obvious that Max Mitchell was the go-to
14 person, so --
15

16 Q. Did you know he was the local area commander at that
17 stage?

18 A. The titles of the police don't really - what's the
19 word?
20

21 Q. Resonate with you?

22 A. Yes, something like that.
23

24 Q. All right. In any event, for whatever reason that you
25 were speaking to Assistant Commissioner Max Mitchell, did
26 you make an inquiry of him about [AL]'s complaint?

27 A. I rang him to get angry with him, to let him know very
28 forcefully that I wasn't happy because I had encouraged her
29 to speak to police and she had been obviously badly hurt by
30 that experience and it was just not appropriate.
31

32 Q. Is it a fair characterisation of some of your articles
33 and some of the things that you understood the Australian
34 Lawyers Alliance were doing, were putting pressure on the
35 police to actually get moving and take some fundamental
36 steps towards advancing the investigation that became
37 Strike Force Lantle?

38 A. That would be a fair summing up, yes.
39

40 Q. However it was handled in terms of the sensitivities
41 of the interview, can you see a possible interaction
42 between that encouragement to impetus and some desire to
43 take statements from people like [AL]?

44 A. We were talking about the end of November by then
45 I think it had a little bit more to do with the way that a
46 statement was taken than any sort of pressure on the
47 police. You can be pressured and still do a good job of

1 taking a statement.
2
3 Q. Did you have conversation with Assistant Commissioner
4 Mitchell about your concerns about the interview and did he
5 say some things to you about that process as well?
6 A. Yes. Are you talking about in terms of the - in that
7 discussion with him?
8
9 Q. Broadly, what did you say to him about what had
10 happened with [AL] and what did he say to you about the
11 process?
12 A. I said that, you know, [AL] had alleged certain
13 things, and that I got the impression that the person who
14 had interviewed [AL] didn't - she didn't do the kind of job
15 that I thought was appropriate, let's just say, and that
16 [AL] had been hurt. Mitchell responded that the police
17 officer didn't have experience and --
18
19 Q. Did he limit that in some fashion, in terms of what
20 she didn't have experience with?
21 A. With child sex abuse matters.
22
23 Q. How did that discussion end or was there more relevant
24 content to it?
25 A. He then - I also said that it was open to me at that
26 point to take the matter to a more formal - that I thought
27 it was serious enough that I could complain as to what were
28 the police doing? I definitely raised that with him. And
29 he said to me that the police officer wasn't experienced.
30 Then he said that maybe it would be a good idea if, you
31 know, I got together with the police and we could - I think
32 he used the word "team", and that I could give them some
33 tips, which I just thought was bizarre.
34
35 Q. Did he ultimately indicate that either Detective Chief
36 Inspector Tayler would be in touch with you or that you
37 ought to be in touch with DCI Tayler?
38 A. Tayler would be in touch with me.
39
40 Q. Ultimately, was there an agreement reached by email
41 that there could be a meeting at Newcastle police station
42 about the matter?
43 A. Yes.
44
45 Q. You asked Andrew Morrison to accompany you?
46 A. Yes.
47

1 Q. Why was that?

2 A. Because, one, as the Lawyers Alliance representative
3 he had had an interest in the matter, so I thought it was
4 appropriate for him to be involved. Two, we were
5 discussing, from what the assistant commissioner had said,
6 you know, moving forward and I thought those elements of
7 section 316, those legal things that Morrison would be able
8 to contribute on that, and also because I wanted a witness.

9

10 Q. Did you have a perception about what the meeting was
11 about from your point of view or what you thought was going
12 to happen at the meeting?

13 A. How we could go forward, how, you know, with the first
14 witness, with such a strong complaint, and such a
15 significant problem then, that the investigator - you know,
16 that that wasn't a good look? What do we do then? And
17 also that, obviously, [AL] wanted to give a statement. She
18 was adamant that she was not going to give a statement to
19 that officer. What were they going to do? So my
20 understanding, I suppose, was maybe how do we move this
21 forward?

22

23 Q. You estimate that the meeting, when it took place at
24 12.30 on 25 November 2010, took somewhere between 30 and
25 60 minutes?

26 A. That's my rough memory of it.

27

28 Q. You indicate it became clear to you fairly shortly
29 into that meeting that DCI Tayler and you had quite
30 different opinions or beliefs about what the meeting might
31 be about?

32 A. Yes.

33

34 Q. What gave you that impression or what happened that
35 made you think that?

36 A. Inspector Tayler said that we weren't going to be
37 discussing the investigation, that we weren't going to be
38 discussing that. So I said "Okay, well, that's not a good
39 start." And then he asked me for names and details of
40 other witnesses, which threw me a little bit because it was
41 like "Hang on, that's not my understanding of what we're
42 doing. We have a complaint from the first witness." At
43 that point I was thinking, "Well, who am I going to be
44 giving him details about?", because I'd furnished details.
45 I knew other people, but not knowing what the police were
46 going to be doing or where they were going, I was thinking
47 "Well, who exactly is he talking about?" Without knowing

1 which way they're taking it, I don't know who is going to
2 be potentially relevant or not, but I certainly hadn't
3 turned up with a list of names and phone numbers.

4
5 Q. Effectively, you were at cross-purposes, it seems?
6 A. That would be a nice way of putting it.

7
8 Q. Did you discuss how things might proceed in terms of
9 taking [AL]'s statement?

10 A. Only insofar as saying that she wasn't going to make
11 the statement to the particular officer. Then Inspector
12 Tayler said something about [AL], that, you know, if she
13 was angry and aggressive and - you know, that she was
14 aggressive and what could they do, or something. It was
15 sort of like, "Oh, well, it's out of our hands." I didn't
16 think much of that response and that was when I said that,
17 you know, it was the responsibility of the police to be
18 able to interview a victim of historic child sexual abuse.

19
20 Q. Was there discussion about support people if [AL] were
21 to be reinterviewed by police?

22 A. Yes.

23
24 Q. How did that happen?

25 A. Well, I think Inspector Tayler and I reached an
26 impasse a couple of times where I was sort of going, "Well,
27 you know, this complaint from the first person", da, da,
28 da, and he would respond, "Well, we need the names and
29 phone number." And then I went, "Well, there's a complaint
30 and it's a live complaint", and he said, "Well, we need the
31 names and phone numbers."

32
33 So it was pretty obvious we weren't going to get far
34 with that. I think I actually raised, "Look, what about if
35 I sit with [AL]?" I knew she'd already asked me to go to
36 the interview with her, so in desperation I'm like, "Well,
37 okay, is there something I can sign? Is there something
38 I can do?" It was Andrew Morrison who actually said, "No,
39 that's not appropriate." I said, "Okay." I do remember
40 Inspector Tayler saying something and I'm guessing - I mean
41 I heard his evidence. He said something like "No", so they
42 just wiped that out and --

43
44 Q. So the idea of you as a support person was rejected?

45 A. Yes. I mean I really didn't want to be there, but
46 I thought, "For heaven's sake, if we - will that do it?
47 I'll sign something."

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Q. Could I get you to focus on this - at the point that you were proposing yourself as the possible support person for [AL], was that with a view of getting some kind of inside seat to the police investigation of [AL]'s complaint --

A. No.

Q. -- or was it for some other reason.

A. It was to support [AL]. The police were placing so much reliance on getting her statement and very definitely in that meeting it was made clear to us that without - and Inspector Tayler said this, that without the statements from [AL] and [AK], there was nothing. So that was the point where I went, "Well, okay. What about if I sit with her? What about that?"

Q. Once Morrison and Tayler excluded you as being the support person, I think you accepted that ruling?

A. Well, I didn't want to - sorry, I didn't want to be the support person.

Q. Were there other options suggested, I'm thinking Helen Keevers?

A. Yes. But then she was potentially a witness as well, so that was sort of - oh, okay, right, that's not going to work; so, yes.

Q. Was that issue finally not resolved at that meeting?

A. No, not really.

Q. After that meeting, did you have another conversation with [AL] about this issue of assisting the police or giving a statement to the police and she told you her attitude to --

A. That's right. She wanted to - she just wanted a rest from it. I think she did indicate that she would give a statement to Peter Fox. Yes, I'm sure Peter Fox's name came up in it, that she would speak to Peter Fox.

Q. Did she advise you that she'd asked the detective chief inspector that there not be any contact with her until the new year?

A. Yes.

Q. You came to understand that there had been attempts by Justin Quinn and DCI Tayler to communicate with [AL]?

1 A. Yes.

2

3 MR HUNT: Commissioner, I think your intention is to take
4 sit until 4.30. The witness has been in the witness box a
5 long time. I'm wondering if we could have a five-minute
6 break for concentration purposes. Without everyone going
7 to the four winds, could we have five minutes and then
8 we'll pick up again.

9

10 THE COMMISSIONER: All right. We will adjourn for five
11 minutes.

12

13 **SHORT ADJOURNMENT**

14

15 MR HUNT: Q. Ms McCarthy, could you turn to paragraph 61
16 of your affidavit which is on page 19. I apologise that
17 I'm going to take something that's slightly out of the
18 chronological order that I've been taking, but it's
19 following the order of your affidavit.

20

A. Yes.

21

22 Q. This is, in context, an event that happened a couple
23 of days before your meeting with DCI Tayler and others at
24 Newcastle?

25

A. Yes.

26

27 Q. Would you now turn to tab 77 of volume 2.

28

A. Yes.

29

30 Q. Are you familiar with the email that I'm talking
31 about?

32

A. Yes.

33

34 Q. In context, in paragraph 61 of your affidavit you set
35 out your recollection of things that were happening at this
36 time in your professional and personal life?

37

A. Yes.

38

39 Q. You'll see that a whole lot of it has been redacted on
40 the copy that's been served on parties because it is to do
41 with confidential or private material. Nonetheless, there
42 were a conjunctive set of things that were happening at
43 that particular time?

44

A. Yes.

45

46 Q. I now want to take your attention now to the email
47 from Peter Fox to you. You'll see that it comes from an

1 email address that's been identified in the other evidence
2 as being DCI Fox's home address rather than his police
3 address. Do you see that?

4 A. Yes.

5

6 Q. There's a report as an attachment and that's a report
7 that has as an issue, "Allegations of child sexual abuse
8 and cover up in the Maitland-Newcastle diocese of the
9 Catholic Church", some pages of background and a
10 recommendation, which is DCI Fox's recommendation that
11 there is sufficient evidence to conduct a full and
12 comprehensive investigation. Do you see that there?

13 A. Yes.

14

15 Q. The body of the email says:

16

17 *Have a read of the attached report and let*
18 *me know what you think.*

19

20 A. Yes.

21

22 Q. And then:

23

24 *PS.*
25 *It is getting late and I haven't proofread,*
26 *so please let me know any grammar or*
27 *amendments you feel might help.*
28 *I'll have a final look at this in the*
29 *morning before I run it down to the region*
30 *office.*

31

32 Are you able to say whether you did at some stage read the
33 report that was attached?

34 A. Yes.

35

36 Q. Did you ever let DCI Fox know any grammar or
37 amendments?

38 A. No.

39

40 Q. The email forwarding effectively the draft report went
41 to you at 23.50 on 24 November 2010?

42 A. Yes.

43

44 Q. If you turn to the next tab, 78, you will see that at
45 17.05, in other words, the next afternoon, just after
46 five o'clock on 25 November, there's a further email from
47 DCI Fox to you saying:

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*Here's the final report I submitted today.
There were a few changes at the end to what
I sent you last night.*

A. Yes.

Q. Can you say, looking at those two emails, when in the time frame you would have read the draft report?

A. My email is, what, 4.34am on the 25th.

Q. Yes.

A. So I sort of responded to him from there. So I've obviously read it.

Q. In context, there, where you say "I think it is excellent. I'm going to be telling Brad Tayler tomorrow", et cetera, in context there, you're referring to the meeting you've just been giving evidence about before the short break, that is, the meeting on the 26th?

A. Yes.

Q. That chain of events, does that suggest to you that you didn't read the draft report until some time after the final report had been submitted, or is that not right?

A. No. Because I've - he --

Q. Oh, I'm sorry?

A. Yes.

Q. So at 4.34 --

A. am.

Q. -- am after he sent you the draft report about midnight --

A. The previous - yes.

Q. -- you respond?

A. Yes.

Q. Saying it's excellent.

A. Yes.

Q. Clearly in context you don't make any grammatical or substantive changes. Did you have a view about whether that was something that you would do?

A. What, make changes?

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Q. Yes.

A. No. No. There are a couple of issues with that. One, no I wouldn't; and, two --

Q. Why wouldn't you?

A. Just because it is his report, and my memory at that time of the morning, I've had a quick scan through it and gone, "That's good", because - a scan, in the old-fashioned sense of scan in the sense of quick skim through it. It's good that he's coming up with a different approach saying - a holistic and, you know, a bigger approach. It is not my issue to sort of make amendments or things like that, nor can I.

The fatal flaw in my doing any amendments to anyone else's documents is that I'm appalling at computers. Everybody in the Newcastle Herald would laugh their heads off at the thought of me amending someone's document. I can't do an attachment to an email without ringing Ashleigh McNeilley, our editorial assistant. So it's not going to happen.

Q. What you are saying is even if you had the desire, which you didn't, you wouldn't have the capacity?

A. That's a bit brutal; but, yes, that's one way of putting it.

Q. In paragraph 63, you say this:

Fox advised me he was called to a meeting at Waratah on 2 December --

In context it must be 2010?

A. Yes.

Q. Then:

with senior police and State Crime Command. He was very positive about the meeting.

A. Yes.

Q. Is this a telephone call? Is this descriptive of a telephone call you had with him?

A. I'd say so, yes.

1 Q. I am reminded of something else I wanted to take up
2 with you before we move on to 2 December. I apologise,
3 Ms McCarthy. If you look at the email behind tab 78 now,
4 which is Peter Fox's email to you forwarding the final
5 report of 25 November - are you with me?

6 A. Yes.

7

8 Q. After a comment about him wondering why you were
9 reading emails at 4.30 in the morning, he finishes that
10 email of 25 November 2010 with this:

11

12 *Anyway, the die is cast - let the games*
13 *begin.*

14

15 What did you take that rather portentous comment to mean?

16 A. That he was going to keep pushing to expand the
17 investigation. Obviously by that stage there was a Strike
18 Force Lantle. That October 18th email made it clear that
19 he wasn't part of it, so he was still pushing to be part of
20 it. That's a colourful comment to say he's still pushing.

21

22 Q. What was the word you just used - "colourful"? Is
23 that kind of hyperbole consistent with a lot of the
24 communications you can from DCI Fox?

25 A. It is fair to say. I mean, I use colourful phrases as
26 well, so - they're emails, so, yes.

27

28 Q. Can I just ask you one more thing about [AL] before we
29 go to 2 December and communications after that meeting. In
30 terms of [AL]'s concerns expressed to you about how she'd
31 been interviewed, did it seem to you in context that she
32 had an impression that the officer who was taking her
33 statement initially should have known more about her
34 circumstances than she did?

35 A. Yes. And I think that was - that was also one of my
36 concerns. If there had been a little bit of context, if
37 there had been a little bit of understanding on the -
38 calling her into a police station just should not have
39 happened because --

40

41 Q. I just want to link this to the question that you saw
42 somewhere in the material DCI Fox said to you he would try
43 to hold back statements unless he was required to hand them
44 over.

45 A. Yes.

46

47 Q. Did you ever get the impression from [AL] that she

1 thought the police generally knew more about her because of
2 other contacts that she might have had with police
3 officers?

4 A. No. I think it was more that she felt that she
5 should - that what happened to her shouldn't have happened.
6 I think it was more sort of, "It's happened to me once
7 before. That's what the church did. Why is it happening
8 to me again?" It was more at that level.

9

10 Q. I just want to now go to where we were up to, which is
11 DCI Fox's first communications with you after the meeting
12 of 2 December.

13 A. Yes.

14

15 Q. I think your best memory is that his having said that
16 he was very positive about the meeting, you thought was
17 communicated to you in a telephone call?

18 A. I think so, yes. Look, he might have emailed as well.
19 This time of day, I'm guessing we had a conversation about
20 it.

21

22 Q. Did you ultimately then get an email from him that was
23 perhaps a different tone to being positive about the
24 meeting?

25 A. Yes. I had a phone call from him first, though.

26

27 Q. Can you remember anything of the content of that phone
28 call save for this impression that he was very positive
29 about the meeting and that there had been --

30 A. Oh, that phone call --

31

32 Q. -- senior police present?

33 A. Yes. He said something about that he expected - State
34 Crime Command was going to be there, or something or other,
35 and - so he had the impression that it was going to finally
36 decide if a bigger investigation was possibly going to be
37 on the table and I - I mean, it happened not long after his
38 report, so I think he thought that maybe there'd been some
39 positive response to that.

40

41 Q. I'm trying to understand, though, in the context of
42 paragraph 63, as I read it, that was Peter Fox advising you
43 that he had been called to a meeting and he was positive
44 about how the meeting had gone. Am I right in that?

45 A. I am sorry. Look, I have worded that really badly. I
46 put that he was very positive about the meeting as if he's
47 talking to me after the event. He was very positive about

1 the possibilities of the meeting.

2

3 Q. The prospect of the meeting?

4 A. Yes, yes, sorry.

5

6 Q. That wasn't a reporting to you about the meeting?

7 A. No. Actually, when I read that back here today,
8 I thought, "Hmm, that's a bit ambiguous." Sorry about
9 that.

10

11 Q. Going then to the email behind tab 84 of volume 2,
12 this effectively is an email that you received from DCI Fox
13 from his home address at 23.19 on 2 December?

14 A. Yes, which I would have read the next morning.

15

16 Q. And is it fair to say that the tone is not consistent
17 with being positive about the outcome of the meeting?

18 A. No.

19

20 Q. I think that can probably be summed up by the last two
21 sentences where the author says:

22

23 *The pricks can shove it. The whole thing*
24 *stinks and they can bit me.*

25

26 Which I think you read to mean "bite me"?

27 A. Yes.

28

29 Q. Did you understand, as a result of what was set out
30 in that, that DCI Fox intended to keep communicating with
31 you, notwithstanding that that had been one of the
32 directions that he not do so?

33 A. Yes. He rang me some time in the afternoon of that
34 day.

35

36 Q. Of the 2nd?

37 A. Yes.

38

39 Q. And what sort of things did he say to you then?

40 A. It was a very short conversation and it was very
41 formal. I got the impression there was somebody else
42 there, and I don't know whether that's correct, but
43 I didn't - it wasn't a chatty conversation and it was to
44 advise me that he wasn't to contact me and that if
45 I contacted him, he had to formally log it or report it, or
46 something. And then the conversation - and I just said,
47 "Okay", or something like that, and that was the end of the

1 conversation.

2

3 Q. In context then, receiving the email much later that
4 evening, did it seem to you that he was going through the
5 motions of notifying you that there wouldn't be contact?

6 A. Yes.

7

8 Q. I want to take you to the email that is behind tab 87
9 and I just want to read the last substantive paragraph
10 after the "PS", which says - you address it in your
11 affidavit, but I want to read it fully before you address
12 your reaction and any action that you took or didn't take
13 in response to this:

14

15 *FYI the COPS can do online checks of*
16 *computers. If you retain an email on your*
17 *system they can read it, who sent it, where*
18 *and when and that sender's computer ID. If*
19 *you print and delete it is a dead end for*
20 *them. Another alternative is to save it to*
21 *a word file and then to a disc or memory*
22 *stick, again deleting the email. Don't let*
23 *the bad guys know.*

24

25 You read that at the time?

26 A. Yes.

27

28 Q. Did you take that to be either an implied or explicit
29 suggestion to you that you could use the kind of techniques
30 described to avoid detection of any email correspondence
31 that you had with DCI Fox?

32 A. I just pulled a face then because again I wouldn't
33 know how to do that and also - I mean, literally I would
34 not have a clue what he's talking about, but leaving that
35 aside --

36

37 Q. The question at the moment is not so much getting at
38 anything that you did or could do in relation to it yet.

39 A. Yes.

40

41 Q. What I'm asking you to direct your attention to at the
42 moment is what you understood to be the intention behind
43 that material being addressed to you?

44 A. Well, it's obvious, you know, if you were of a mind to
45 get rid of things, this is a way of doing it.

46

47 Q. Putting to one side your Luddite tendencies concerning

1 technology --
2 A. Technical inability.
3
4 Q. -- in terms of impossibility and just assume for the
5 moment that you had those capacities --
6 A. Yes.
7
8 Q. -- first of all, did you or would you behave in the
9 way that is encouraged in that paragraph?
10 A. No, I didn't and I wouldn't.
11
12 Q. Why wouldn't you?
13 A. Just practice; just, you know, as a journalist you
14 don't get rid of things because you just don't, so --
15
16 Q. Did you ultimately receive a summons from this
17 Commission?
18 A. Yes.
19
20 Q. In relation to your email correspondence relative to
21 DCI Fox?
22 A. Yes.
23
24 Q. Did you produce about one and a half photocopy boxes
25 full of hard copy emails?
26 A. Yes.
27
28 Q. Did you ultimately have cause to search for a few more
29 other bits and pieces and provide some extra material on
30 top of that hard copy that you provided?
31 A. Yes.
32
33 Q. Were you able to satisfy yourself that in terms of
34 converting, with the assistance of the editorial assistant
35 of the Newcastle Herald --
36 A. The wonderful Ashleigh.
37
38 Q. -- to the best of your knowledge, anything that was in
39 cyberspace has been reduced into a hard copy form for
40 production?
41 A. Yes.
42
43 Q. Can I just ask you now, having clarified your position
44 about those things, Ms McCarthy, to turn to the page
45 immediately before that one that I've been asking you
46 questions about. It's got paginated number 369 on the
47 bottom. It is the third page of that email.

1 A. So we'll still on tab 87?
2
3 Q. Yes, I'm sorry.
4 A. Sorry, which page?
5
6 Q. It is the second page of the email. It's got 369 down
7 the bottom. Do you see that?
8 A. Yes.
9
10 Q. Do you see in the second half that DCI Fox goes
11 through possible options in relation to the investigation
12 moving forward?
13 A. Yes.
14
15 Q. And then he says this:
16
17 *It is all a bit early at present: you may*
18 *have to just see how the witnesses want*
19 *this to play out.*
20
21 Did you understand what was meant by that?
22 A. Well, I suppose the witnesses would have had an
23 opinion about their expectations of the police
24 investigation.
25
26 Q. Was there by this stage any plan that either you had
27 in mind or that DCI Fox had shared with you about plans
28 towards trying to bring about a royal commission in
29 relation to some of the issues --
30 A. No, definitely not.
31
32 Q. That was some time --
33 A. No.
34
35 Q. That happened, but some time much later; is that
36 right?
37 A. Yes, 2012. At that stage, as I said, when Stephen Rae
38 mentioned the Truth and Reconciliation - I think one of my
39 emails just says, "Well, as if that's going to happen." It
40 just wasn't on the radar as a realistic proposition in
41 2010.
42
43 Q. Where DCI Fox said this to you:
44
45 *You will have to decide what to do*
46 *depending on when this investigation*
47 *finishes. I have a feeling that you will*

1 *have to muster a fair bit of criticism.*

2
3 What did that relate to?

4 A. Well, I'm guessing that there he's - I'm not guessing,
5 you can read it, that, you know, my job, as he sees it, is
6 to sort of criticise the police at that point. Just
7 because it is written doesn't mean to say that it is going
8 to happen, though.

9
10 Q. Were those things that you were doing, if you were
11 doing them, in your interests or in his or in both, or how
12 would you express that in terms of criticism of police?
13 I'm asking whether that was part of your set of priorities
14 as a journalist or whether you were doing it because Fox
15 was encouraging you to do it?

16 A. My criticism of police at that point was restricted to
17 the treatment of [AL], and if that interview had gone well
18 then I wouldn't have been - there wouldn't have been a
19 phone call from me to Max Mitchell. Peter Fox's part of it
20 was a separate issue. He believed that he should have been
21 involved in the investigation, but that was his position.

22
23 Q. Do you see that there's a possible implication
24 available that you getting an email from DCI Fox that says,
25 "You may have to just see how the witnesses want this to
26 play out, and you will have to decide what to do depending
27 on when this investigation finishes," et cetera, there's a
28 suggestion, at least from Fox's point of view, that he saw
29 you in league with him in some way?

30 A. Clearly.

31
32 Q. Was that a perception that you shared, that you felt
33 to be that you were in league for a higher purpose, perhaps
34 in 2012; but at this point did you consider that you were
35 in league with Peter Fox against either the church or the
36 police or both?

37 A. I wanted the victims to be looked after. I wanted the
38 witnesses to be looked after and I wanted the police to
39 investigate the matter and do it in a way that looked after
40 those victims.

41
42 Q. Do you think that, to the extent that there was that
43 possible alliance with DCI Fox, that affected your
44 objectivity in relation to decisions or reporting that you
45 made about the balance of the police, given that he was so
46 at odds with them?

47 A. No.

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Q. All right.

A. Because I think if you look at the totality of the material that we didn't produce, particularly in December and the article, that seems to have caused the police the most grief, that "Strike farce" article, it was completely open to me in that article to put in that there had been a formal complaint against police by that strike force. I didn't do that. I didn't want to go to the police. I would have been thrilled to bits if they'd just investigated the matter and I didn't have to have any part in it.

Q. Can I just ask you about this: you accept that the article that you're referring to as "Strike farce" is the article which was a front-page article on 24 December 2010?

A. Yes.

Q. And it identified, among other things, that the three officers who were most closely attached to Strike Force Lantle had gone off on sick leave?

A. Yes.

Q. The title of the article itself, is that your words?

A. No. "Strike farce" is the sub-editor's or the editor's. Particularly on the front page, the journalist who writes the copy for a newspaper like ours does not write the heading, the headline. I wrote the copy, but I had nothing to do with the headline.

Q. Picking up what you were just talking about a couple of answers ago about having this objective of wanting the police to do a thorough investigation, I think there was a point in around April 2011 when you formed the view, because of communications from people who may have - I don't want you to go into the details of the identity or anything like that, but you were having feedback with people who may have been involved in a further stage of the investigation, April 2011 and onward?

A. Yes.

Q. Did you form the view that the kind of things that you had wanted to achieve, that is, a thorough and efficient investigation, were happening?

A. Yes.

Q. Did you cease to write articles about the issue around

1 that time?
2 A. Yes.
3
4 Q. Why?
5 A. Because the police were doing the investigation, and
6 the feedback that I had from the victims was that they were
7 being looked after.
8
9 Q. Have you come to understand that there's a possible
10 interpretation available that some of DCI Fox's actions may
11 have been to do with internal police relations between him
12 and certain other officers?
13 A. Yes.
14
15 Q. Could you say something about your attitude to that
16 sort of material as opposed to the sort of material that
17 you've just been talking about, about your desire for an
18 effective investigation to take place?
19 A. Right. So you're talking about --
20
21 Q. You said that your, as I understand it, at least
22 principal motivation was to get an investigation happening?
23 A. Yes.
24
25 Q. And the police to do what you perceived to be their
26 job?
27 A. Yes.
28
29 Q. In April 2011, you were satisfied that that was
30 happening and you stopped writing articles at a certain
31 point because you were satisfied that your desire had been
32 met by action?
33 A. In April 2011, I wrote the article that was basically
34 that a year has gone by and that was a critical article.
35 It was --
36
37 Q. And then you did certain other things we're going to
38 come to around about that time?
39 A. Yes. Subsequent to that, when I had feedback from the
40 victims who had contact with Detective Little and it was
41 very positive and after that there was --
42
43 Q. No further articles relative to dilatory police
44 behaviour?
45 A. No.
46
47 Q. What I'm asking you to now comment on, having given

1 your evidence about what your principal objective was, or
2 maybe it was your only objective, I don't know --

3 A. It was my only objective.
4

5 Q. -- I'm asking you if there's an available inference
6 that some of whatever other motivations for good or ill he
7 may have had, that part of DCI Fox's motivations may have
8 been connected with internal police alliances or
9 non-alliances and so on. What's your attitude to aligning
10 to support DCI Fox on those things?

11 A. Whether I was aligned to them?
12

13 Q. Yes. Whether that was another objective that you were
14 trying to pursue --

15 A. No.
16

17 Q. -- was to advance his agenda against certain police?

18 A. No, definitely not.
19

20 Q. You say you wrote a critical article in April 2011?

21 A. Yes.
22

23 Q. I think you mean "critical" in both ways, don't you;
24 critical in the sense that it was critical of the police?

25 A. Yes.
26

27 Q. But critical in the sense that you saw it as being
28 important?

29 A. Oh, well, I thought it was necessary.
30

31 Q. There was something else that you did as a citizen
32 alongside that time frame of writing that particular
33 article in April 2011; is that right?

34 A. Yes.
35

36 Q. Could you explain what you did and why you did it?

37 A. I wrote a complaint to the Police Integrity Commission
38 about my beliefs about the police handling of certain
39 documents and just some of the things that followed after
40 it. I wrote it acknowledging that I was a journalist and
41 I wrote it for a number of reasons. A year had gone by.
42 I had had advice that if I had concerns, the Police
43 Integrity Commission was the appropriate place to take it
44 to, and also because when people contact the media, if
45 somebody contacts me and they've got a complaint about
46 something, say a government body or anything, virtually the
47 first thing I say to them is, "Have you formally

1 complained?" So, if they have a serious issue, "Have you
2 complained? Is there a written complaint from you to that
3 body so that that body can address your issues?" To my way
4 of thinking, I write the article because I'm a journalist,
5 but I also put in a formal complaint because I wasn't happy
6 with the way that it had gone and I thought it was
7 appropriate to put down the reason for it.

8
9 Q. Were you complaining as a journalist or as a citizen,
10 or both?

11 A. Both. I mean, if I was complaining - it wasn't on the
12 Newcastle Herald letterhead. I made it clear in my
13 affidavit I did not - I thought about it for quite a few
14 weeks, actually. In the end, I did not consult the editor
15 mainly because, I mean, you know, a journalist complaining
16 to the Police Integrity Commission on something as
17 sensitive as this, I didn't have a clue what was going to
18 happen. So I thought about it and I thought, no. I wanted
19 the editor to be able to honestly - can I use the
20 proverbial phrase? If the shit had hit the fan, I wanted
21 the editor to be able to honestly say, "I did not know
22 about this." But I still thought it was important to raise
23 it and just because I was a journalist did not preclude me
24 from having rights as a citizen. So I clearly flagged that
25 I was writing it as a journalist, but it wasn't on a
26 letterhead.

27
28 Q. Just step-wise, could you - and thank you for that -
29 go to tab 111 which is towards the back of volume 2.
30 Relying on the paginated numbers at the bottom, would you
31 go to page 528. Albeit imperfectly copied and perhaps not
32 presented as glamorously as it might have been on the
33 Newcastle Herald --

34 A. It was only page 8.

35
36 Q. Is that the article that you were talking about that's
37 headed "Inquiry into church cover-up 'disgrace'"?

38 A. Yes.

39
40 Q. Was that published on page 8 of the Newcastle Herald
41 for Monday, 18 April 2011?

42 A. Yes.

43
44 MR HUNT: Would you excuse me a moment, Commissioner.
45 I will tender that for completeness.

46
47 THE COMMISSIONER: Page 528, under tab 111, being a

1 newspaper article by Ms McCarthy of 18 April 2011, will be
2 admitted and marked exhibit 29.

3
4 **EXHIBIT #29 PAGE 528 UNDER TAB 111, NEWCASTLE HERALD**
5 **ARTICLE BY MS McCARTHY DATED 18/4/2011**
6

7 MR HUNT: Q. Can I show you a document that has a file ID
8 of LM1102477 and a TRIM file reference of F/2013/13924.
9 Could you just have a look at this and I direct your
10 attention, first of all, to the last three pages which are
11 typewritten. Is that the complaint that you made to the
12 Police Integrity Commission?

13 A. Yes.
14

15 MR HUNT: My friends who act for the NSW Police Force are
16 just going to consider this. I've indicated it is my
17 intention to tender this whole set of material but it needs
18 to be considered.
19

20 THE COMMISSIONER: Yes.
21

22 MR HUNT: Could I say something about sitting times while
23 that's happening?
24

25 THE COMMISSIONER: Yes.
26

27 MR HUNT: I think your intention for tomorrow is to sit
28 between 9.30 and 4.30.
29

30 THE COMMISSIONER: Correct.
31

32 MR HUNT: And then, on Wednesday and Thursday, to sit
33 between 9.30 and 4pm. On those occasions ending at 4pm
34 simply because there are things that those who are
35 assisting need to do that are important and time consuming
36 and relate to this Commission. The earnest hope is that
37 the evidence might be finished by the end of Thursday, but
38 I think, Commissioner, you've reserved Friday in case, but
39 the firm desire is that evidence that relates to term of
40 reference number 1 conclude this week because term of
41 reference 2 starts on 1 July.
42

43 THE COMMISSIONER: Monday.
44

45 MR HUNT: Yes.
46

47 THE COMMISSIONER: Thank you Mr Hunt. That's all correct.

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MR HUNT: I don't have much more with this witness, but if the position is that a view can't be reached now, perhaps we could pick up the evidence-in-chief and conclude it, except that means, Commissioner, that you will be stopping six minutes ahead of the projected time.

THE COMMISSIONER: Yes, you know how diligent I am.

MR HUNT: I do. That's why I'm asking your indulgence, but I'm also trying to lip-read what Mr McIlwaine is saying to me.

MR McILWAIN: I'm seeking your indulgence, Commissioner. I have five to 10 minutes evidence of this witness.

THE COMMISSIONER: Would you like to do that now? That's a good idea.

MR HUNT: I'm diligent but I'm also chivalrous, so I'm prepared to stop my examination-in-chief and allow Mr McIlwaine to ask some questions.

MR McILWAIN: They are very limited.

MR HUNT: Q. Ms McCarthy, I'm going to finish asking questions and we're going to deal with this document in the morning. Mr McIlwaine, because he has a very limited involvement in the matter, is going to cross-examine you now.

A. Yes.

THE COMMISSIONER: Thank you, Mr McIlwaine.

<EXAMINATION BY MR McILWAIN:

MR McILWAIN: Q. I represent the interests of former Detective Inspector Brad Tayler and former Detective Sergeant Justin Quinn.

A. Yes.

Q. The first question I want to ask you is: a significant complaint you had is the way police officers, initially at least, dealt with [AL]?

A. Yes.

Q. That complaint is based on information given to you by

1 [AL] about what took place; is that correct?
2 A. Yes.
3
4 Q. You, of course, don't have the version of what took
5 place in those meetings of Officer X, for example, do you?
6 A. No.
7
8 Q. And you are entirely reliant on what she has conveyed
9 to you - that is, what [AL] has conveyed to you - is that
10 correct?
11 A. Yes.
12
13 Q. In those circumstances, would you concede that you
14 could be incorrect in making criticisms of the way that
15 Officer X dealt with [AL], if the information you received
16 was in fact unreliable?
17 A. My involvement with it was to raise the issue with
18 Assistant Commissioner Mitchell and it was expressing my
19 concerns because I'd encouraged her. So as to the nature
20 of what happened, that was why the complaint was important.
21 It was for the police to sort out what had happened, not
22 me.
23
24 Q. I accept that, but you have no objective evidence
25 about what happened other than what [AL] has told you;
26 correct?
27 A. Correct.
28
29 MR McILWAIN: Could the witness be shown exhibit 15,
30 Commissioner.
31
32 THE COMMISSIONER: Yes.
33
34 MR McILWAIN: Q. That's a two-page document you have in
35 front of you?
36 A. Actually, sorry, it's just occurred to me that I also
37 have what Assistant Commissioner Mitchell conceded to me in
38 the discussion on the 19th.
39
40 Q. But your knowledge, of course, is that Assistant
41 Commissioner Mitchell wasn't present at [AL]'s interview?
42 A. Correct.
43
44 Q. Would you look at that document that's just been
45 handed to you. Have you seen that document before?
46 A. Yes.
47

1 Q. Would you turn to the second page. It is shown as
2 being copied to you?
3 A. Yes.
4
5 Q. You have seen that before?
6 A. Yes.
7
8 Q. It appears to have been a document signed by [AL] and
9 forwarded on 9 November 2010. Did you see that document
10 before it was forwarded to the NSW Police?
11 A. Yes.
12
13 Q. You did?
14 A. Yes.
15
16 Q. What were the circumstances in which you saw that
17 document?
18 A. The person supporting [AL] provided me with a draft of
19 it, emailed me a draft.
20
21 Q. Has that email draft to you been provided to this
22 Commission?
23 A. Yes.
24
25 Q. After you received the email draft, did you make any
26 changes?
27 A. No.
28
29 Q. You will see in the heading the person it is addressed
30 to is Ms York. Do you see that, the top left hand of the
31 front page?
32 A. Yes.
33
34 Q. The information there about her rank and position, was
35 that information you conveyed to [AL]?
36 A. Yes.
37
38 Q. You will see --
39 A. At her request.
40
41 Q. Do you see at the bottom of the second page the
42 document is copied to a number of persons?
43 A. Yes.
44
45 Q. With their ranks and/or positions?
46 A. Yes.
47

1 Q. Is that also information you conveyed to [AL]?
2 A. And the support person who asked me - he drafted the
3 letter and then asked me who should it - because I had been
4 dealing with the police, so who should it go to.
5
6 Q. You just said he drafted the letter?
7 A. Yes.
8
9 Q. Do you know the name of that person?
10 A. Yes.
11
12 Q. I don't want you to give it - yes?
13 A. Yes.
14
15 Q. I don't know if the name is one of the persons who has
16 a pseudonym?
17 A. I'm not sure.
18
19 MR HUNT: The position is the person doesn't have a
20 pseudonym, but perhaps the relationship with [AL] would
21 disclose her identity, and that's why I've been careful
22 about that.
23
24 THE WITNESS: Yes.
25
26 MR McILWAINE: Q. I'm happy to refer to it in a vacuum.
27 So is it your understanding that the male person you have
28 been talking about drafted this letter?
29 A. With [AL].
30
31 Q. When you say that, were you present when he drafted
32 it?
33 A. No.
34
35 Q. How do you know he was present with [AL] when it was
36 drafted?
37 A. Because she told me, he told me - we had discussions.
38
39 Q. But the words in the letter, is it your understanding
40 that they are the words of this male person, not the words
41 of [AL]?
42 A. No.
43
44 Q. Do you know if [AL] - you've known her for three
45 years, I think; is that right?
46 A. Since 2007.
47

1 Q. Would you look at, for example, the second line, we'll
2 go back a step - do you see the salutation, "Dear
3 Commander"?
4 A. Sorry?
5
6 Q. The salutation; it's the words at the top left-hand of
7 the page on under the address "Dear Commander"?
8 A. Yes.
9
10 MR HUNT: I object to this. I can anticipate what
11 Mr McIlwaine is endeavouring to do through this. He's
12 saying [AL] had some help in drafting the complaint, which
13 might not come as a surprise, but more importantly, how is
14 it going to inform your view, Commissioner, as to matters
15 that are within the term of reference?
16
17 MR McILWAIN: Perhaps can I answer, Commissioner.
18
19 THE COMMISSIONER: Yes, Mr McIlwaine.
20
21 MR McILWAIN: My clients, and Officer X as well, have
22 been subject to criticism as to how they dealt with [AL].
23 I've certainly not seen any evidence from [AL] where she
24 expresses that criticism. There is some evidence from
25 Officer X about what took place, which we have,
26 Commissioner, I don't know how restricted I am to
27 commenting on that evidence.
28
29 MR HUNT: You're restricted at this stage, given it was
30 taken in camera.
31
32 MR McILWAIN: All can I say is, in my submission, is that
33 would throw some doubt on the validity of the complaint.
34 I'll say nothing more than that.
35
36 THE COMMISSIONER: I completely understand your position,
37 Mr McIlwaine.
38
39 MR McILWAIN: That's why I'm going to this issue.
40 I think I've covered it. I simply didn't know anything at
41 all about the circumstances in which this document came
42 into existence and objectively, on the face of it, there
43 were matters which went to the provenance of it as having
44 come from [AL], and that was my concern. I think I've
45 probably covered that.
46
47 THE COMMISSIONER: Yes. What is understood is that

1 another person drafted this letter for [AL], but it may not
2 be that this witness can tell us precisely how much input
3 [AL] had.

4
5 MR McILWAIN: I suppose I just wanted to exclude her as a
6 suspect, effectively.

7
8 THE WITNESS: Thanks.

9
10 MR McILWAIN: Q. You've given evidence about a meeting
11 with Detective Tayler and Detective Quinn and others and
12 Mr Morrison --

13 A. Yes.

14
15 Q. -- and these issues were discussed. You've said from
16 your observation of it, yourself, and Mr Morrison perhaps,
17 had come to the meeting with an entirely different
18 preconception as to what was going to take place at the
19 meeting from Detective Tayler in particular; correct?

20 A. Yes.

21
22 Q. Your observation was that Detective Tayler had an
23 understanding that you were going to provide some
24 information to him; correct?

25 A. Yes.

26
27 Q. What was your understanding of the purpose of the
28 meeting?

29 A. To try and sort out a way forward. It was pretty
30 vague because it was actually Assistant Commissioner
31 Mitchell who suggested the meeting, but he wasn't at the
32 meeting. So it was more sort of we can get you together
33 with the police, you know, to take it forward.

34
35 Q. Was that part of the problem - the meeting had been
36 suggested by somebody else who wasn't there?

37 A. Yes.

38
39 Q. In regard to Mr Morrison, he didn't act for [AL]?

40 A. No.

41
42 Q. He didn't act for any other victim of Father
43 McAlinden; correct?

44 A. No.

45
46 Q. Would you agree with the proposition that, therefore,
47 it would have been totally inappropriate for New South

1 Wales police officers to provide him with any information
2 about their contact with [AL]?

3 A. We weren't there to talk about - sorry, what was the
4 question again?

5

6 Q. [AL] had made a complaint or was in the process of
7 making a complaint to the NSW Police about the conduct of
8 Father McAlinden?

9 A. But that wasn't the subject of the meeting.

10

11 Q. I thought the subject of the meeting was to progress
12 the investigation of the complaint that there had been a
13 cover-up, a concealment of a serious offence; correct?

14 A. The point of the meeting was to take it forward with
15 [AL], but the issue of her complaint had nothing to do with
16 the meeting because that was separate to be dealt with by
17 the police.

18

19 Q. We're using the word "complaint" in two different
20 senses. I'm talking about her complaint about Father
21 McAlinden and the cover-up?

22 A. Oh, the original, yes.

23

24 Q. That's what it was all about?

25 A. Yes.

26

27 Q. Everyone wanted that to be progressed?

28 A. Yes.

29

30 Q. It would have been inappropriate, I suggest to you,
31 for Detective Tayler or any other police officer to provide
32 you with information about you or Mr Morrison about their
33 contact with [AL] in those circumstances?

34 A. We weren't after information about their contact with
35 [AL]. It was more she had expressed very strongly that she
36 was not going to deal with that particular officer. It was
37 a matter of "Okay, what's the next step?"

38

39 Q. The police officers were expressing to you - that's
40 Detective Tayler - to progress the investigation of the
41 concealment offence, they had to have a statement from
42 [AL]. That was their view; do you agree with that?

43 A. Yes.

44

45 Q. And you understand that subsequently, Detective Justin
46 Quinn spoke to [AL]?

47 A. Yes.

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Q. And seemed to establish a good relationship with her - did that come back to you?

A. I think at the point he wanted to speak with her and then she rang me again because she didn't want - she expressed that she didn't want to be contacted. The issue of the complaint was still there and hadn't been addressed. So it was sort of this --

Q. The complaint wasn't about Detective Quinn?

A. No.

Q. What I want to put to you is --

A. But I think she had expressed that, you know, she'd lost trust with "the police" or --

Q. Did you come to understand that, ultimately, she reached an agreement with Detective Justin Quinn that they would meet in the near future and she would speak to him about the matter?

A. I think so, yes.

MR McILWAIN: Nothing further, Commissioner.

THE COMMISSIONER: Thank you Mr McIlwaine. I will adjourn until 9.30.

AT 4.40PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 25 JUNE 2013 AT 9.30AM

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